TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 102.

THE MISSOURI VALLEY LAND COMPANY AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR,

vs.

CARSTEN WRICH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED SEPTEMBER 22, 1906.

(20,369.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 29, 1907.

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1 No. 14233.

CARSTON WRICH, Appellee,

v.

THE UNION PACIFIC RAILWAY COMPANY, SIOUX CITY & PACIFIC RAILROAD COMPANY, Appellees; Impleaded with MISSOURI VALLEY LAND COMPANY and IOWA RAILROAD LAND COMPANY, Appellants.

Pleas before the Supreme Court of the State of Nebraska, at a term thereof begun and holden at the Capitol, in the City of Lincoln, in said State, on the 2nd day of January, A. D. 1906.

Present: Hon. Silas A. Holcomb, Chief Justice, Hon. Samuel H. Sedgwick, Judge, Hon. John B. Barnes, Judge.

Attest:

H. C. LINDSAY, *Clerk.*

Be it remembered, that on the 15th day of April, A. D. 1905, there was filed in the office of the Clerk of said Supreme Court a certain Transcript in the words and figures following, to-wit:

Please before the District Court of the Fourth Judicial District of Nebraska, in and for the County of Washington at a term thereof begun and holden in the City of Blair, in said County and State, on the 13th day of October, One Thousand Nine Hundred and Two.

2 Present: Honorable Geo. A. Day, Judge.

THEO. HALLER, *Clerk.*

Be it remembered, that heretofore, to-wit, on the 12th day of November, 1902, a Petition was filed in the office of the Clerk of said Court in the words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,

vs.

THE UNION PACIFIC RAILWAY COMPANY, SIOUX CITY & PACIFIC RAILROAD COMPANY, MISSOURI VALLEY LAND COMPANY, Defendants.

Petition.

The plaintiff complains of the defendants and for cause of action alleges:

1. That the defendants, The Union Pacific Railway Company, The Sioux City & Pacific Railroad Company and the Missouri Valley

Land Company are each Corporations and that by act of Congress of the United States, passed July 1st, 1862, and amended July 2nd, 1864, certain lands located in Washington county, Nebraska, the property of the United States Government, and including the lands hereinafter described, were granted by the United States Government to The Union Pacific Railway Company and the Sioux City & Pacific Railroad Company and that all conditions of the said grants to be kept and performed on the part of said corporations have been by them fully complied with and that a patent in accordance with law has been issued.

2. That the Missouri Valley Land Company by purchase and conveyance has become the successor in interest to all of the rights of said Sioux City & Pacific Railroad Company in and to the land hereinafter described as the property of the plaintiff herein.

3. That there was an arrangement between The Union Pacific Railway Company and the Sioux City & Pacific Railroad Company, whereby the said The Union Pacific Railway Company was authorized to enter into a good, valid, and binding contract with purchasers for the conveyance and sale of said land covered by said grants with a covenant on the part of said Sioux City & Pacific Railroad Company to execute conveyances of said land to the purchaser upon payment of the purchase price therefore.

4. That thereafter, the plaintiff herein purchased of and from The Union Pacific Railway Company the Northwest quarter of the Northeast quarter of Section twenty one (21), Township seventeen (17), Range eleven (11), Washington County, Nebraska, and on or about the 16th day of March, 1881, entered into possession thereof and has ever since continued to occupy said property, to make improvements thereon and to occupy the same. That thereafter, this plaintiff paid the entire purchase price for said land to The Union Pacific Railway Company and on March 12th, 1890, the said Company by deed conveyed the said property to this plaintiff but that neither the Sioux City & Pacific Railroad Company nor the Missouri Valley Land Company united in said conveyance, and said Missouri Valley Land Company now claims some right and interest in and to said land and its claim is a cloud upon plaintiff's title.

5. Plaintiff further alleges that he immediately after the purchase of said land, to-wit, the 16th day of March, 1881 entered into possession thereof as vendee, made improvements thereon, consisting of fences and has at all times and dates since said purchase since he entered into possession of same, resided upon said land continuously and occupied, used and cultivated the same and the whole thereof from year to year continuously as the absolute owner thereof, openly, advers-ly, hostil-ly, notoriously, exclusively and uninterruptedly, and that said occupation and possession of said land during the time since its purchase from The Union Pacific Railway Company has been and now is open, public, continuous, peac-able, quiet, exclusive and adverse under his said purchase, ownership and claim of title and right against said defendants or any of them and all persons whomsoever. That no patent was ever issued for said land until September 23, 1897, when a patent

was granted to the Missouri Valley Land Company, but said land was thereafter reconveyed by the said Missouri Valley Land Company to the Government of the United States and later a patent was reissued jointly to The Union Pacific Railway Company and the Missouri Valley Land Company. That this plaintiff at no time had notice of any claim, title or interest on behalf of the said Missouri Valley Land Company or the Sioux City & Pacific Railroad Company in and to said land and that he purchased the same from The Union Pacific Railway Company with the belief that it had a good and perfect title thereto and that its deed of conveyance vested said title in this plaintiff.

5 6. Plaintiff alleges that he is without remedy at law and can only have and obtain complete and adequate relief in a Court of equity where matters of this nature are properly cognizable and remedial.

Wherefore, the plaintiff prays that the said defendants and each of them be required to answer the allegations of this petition; that upon the hearing of this cause, it may be adjudged and decreed that the title of the plaintiff in and to all of said land is good and sufficient in law against each and all of the defendants and all persons claiming interest or title thereto by, through or under them; that plaintiff's title to said land may be quieted in him and for his costs in this suit and for such other and further relief as equity may demand.

JAMES H. VAN DUSEN,
Attorney for Plaintiff.

STATE OF NEBRASKA, *County of Washington, ss:*

Carston Wrich being first duly sworn, on oath says that he is the plaintiff above named, that he has read the allegations contained in the foregoing petition and believes them to be true.

CARSTON WRICH.

Subscribed in my presence and sworn to before me this 13th day of September, 1902.

[SEAL.]

I. C. ELLER,
Notary Public.

My Com. Exp'r's Jan. 4, 1904.

And afterwards, on the 7th day of February, 1903, there was filed in the office of said Clerk a certain disclaimer in words and
6 figures following, t-wit:

In the District Court, Washington County, Nebraska.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

Disclaimer.

Comes now the Union Pacific Railway Company and disclaims any and all interest of every kind or nature in and to the subject matter of this action, and asks the Court to protect it against costs.

THE UNION PACIFIC RAILWAY COMPANY,
By W. R. KELLY.

And afterwards, on the 19th day of September, 1903, there was filed in the office of said Clerk a certain Amended Petition in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, MISSOURI VALLEY LAND COMPANY, IOWA RAILROAD LAND COMPANY, Defendants.

Amended Petition.

The plaintiff complains of the defendants and for his cause
7 of action alleges:

1. That defendants, The Union Pacific Railway Company, Missouri Valley Land Company and Iowa Railroad Land Company are each corporations and that by the act of Congress of the United States passed July 1st, 1862, and as thereafter amended, certain lands located in Washington county, Nebraska, the property of the United States Government, and including the lands hereinafter described, were granted by the United States Government to The Union Pacific Railroad Company, and the Sioux City & Pacific Railroad Company and that all of the conditions of the said grants to be kept and performed on the part of said railroad corporations have been by them fully complied with.

2. That the Missouri Valley Land Company, by purchase and conveyance, became the successor in interest to and the owner of all the rights, title and interest of the Sioux City & Pacific Railroad Company in and to the lands hereinafter described, and that thereafter, and as this plaintiff is informed and charges the fact to be, the Missouri Valley Land Company sold and transferred, by good and sufficient instrument, all its title in and to the land hereinafter described to the Iowa Rail Road Land Company which now claims to

be the owner and holder of a certain title to the property hereinafter described but said instrument is not of record in Washington County.

3. That prior to the transfer of any right or title by the Sioux City & Pacific Railroad Company to the Missouri Valley Land Company there was an arrangement and agreement between The Union Pacific Railroad Company and the Sioux City & Pacific Railroad Company whereby the said The Union Pacific Railroad Company was
8 authorized to enter into good, valid and binding contracts with the purchasers for the sale and conveyance of title of said lands covered by said land grants from the Government with a covenant on the part of the said Sioux City & Pacific Railroad Company to execute conveyances of said land to the purchasers upon the payment of the purchase price therefor.

4. That there has been issued by the Government of the United States a joint patent running to The Union Pacific Railroad Company and the Missouri Valley Land Company conveying to said corporations a legal title to the north west one quarter (¼) of the north east one quarter (¼) of section twenty one (21), Township seventeen (17), Range eleven (11), Washington county, Nebraska.

5. That on the 12th day of March, 1890, the plaintiff obtained title by purchase from the Union Pacific Railroad Company to the northwest ¼ of the northeast ¼ of section 21, Township 17, Range 11, Washington county, Nebraska, which said title was conveyed by warranty deed under that date and which was filed for record on November 15, 1890, in the office of the County Clerk of said Washington county, and is recorded in Book 27 of the deed records at Page 8 thereof and that said plaintiff immediately entered into possession of said property and has continued to remain in open, adverse, hostile, notorious, exclusive and uninterrupted possession of the same down to the present time. That in the conveyance from the said The Union Pacific Railroad Company to this plaintiff, neither the Sioux City & Pacific Railroad Company, the Missouri Valley Land Company nor the Iowa Railroad Land Company united and that the said Missouri Valley Land Company
9 and the Iowa Railroad Land Company now claim some right and interest in and to said land and their claim and the record title of said patent running to the Missouri Valley Land Company is a cloud upon the plaintiff's title.

6. That ever since the 12th day of March, 1890, the plaintiff has been in possession of said property, has made improvements thereon consisting of fences, and has at all times and dates since said purchase resided upon said land continually and occupied, used and cultivated the same, and the whole thereof, from year to year continuously as the absolute owner thereof and has openly, adversely, hostilely, notoriously, exclusively and uninterruptedly occupied and possessed the same and has been, and now is in open, public, continuous, peaceable, quiet, exclusive and adverse possession of said property as against said defendants, and any or all of them, and all persons whomsoever. That no patent was ever issued for said land until September 23rd, 1897, when a patent was granted to the

Missouri Valley Land Company *to* the Government of the United States, and later a patent was re-issued jointly *to* The Union Pacific Railroad Company, and the Missouri Valley Land Company. That this plaintiff at no time had notice of any claim, title or interest on behalf of said Missouri Valley Land Company, or Sioux City & Pacific Railroad Company or the Iowa Railroad Land Company and that he purchased the same from The Union Pacific Railroad Company with the belief that said Company had a good and perfect title thereto, and that its deed of conveyance vested said title in this plaintiff.

Seventh. Plaintiff alleges that he is without remedy at law
10 and can only have complete and adequate relief in a court of equity where matters of this nature are properly cognizable and remedial.

Wherefore, plaintiff prays that said defendants, and each of them, be required to answer the allegations of this petition, that upon hearing of this cause, it may be adjudged and decreed that the title of the plaintiff in and to the said lands is good and sufficient in law and equity as against each and all of the defendants and all persons claiming an interest in the title thereto by, through or under them; that plaintiff's title to said land may be quieted in him and that the defendants, and each of them, and their grantees may be perpetually enjoined from asserting title to the above described premises, or any part thereof, and for his costs in this suit; and for such other and further relief as equity may demand.

JAMES H. VAN DUSEN,
Att'y for Pl'ff.

STATE OF NEBRASKA, *County of Washington, ss:*

Carston Wrich, being first duly sworn, on oath says that he is the plaintiff in the above entitled cause of action, that he has read the allegations contained in the foregoing amended petition and believes them to be true.

CARSTON WRICH.

Subscribed in my presence and sworn to before me this 16th day of September, 1903.

[SEAL.] I. C. ELLER,
Notary Public.

My Com. expires Jan. 4th, 1904.

11 And afterwards, on the 19th day of September, 1903, there was filed in the office of said Clerk, certain Affidavit for Service by Publication, in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,
vs.
UNION PACIFIC RAILROAD COMPANY ET AL., Defendants.

Affidavit for Service by Publication.

STATE OF NEBRASKA, *County of Douglas, ss:*

James H. Van Dusen, being first duly sworn, on oath says that he is the Attorney for the plaintiff in the above entitled cause of action; that on the — day of —— 1902, the plaintiff filed a petition in the District Court of Washington County, Nebraska, against The Union Pacific Railroad Company, the Missouri Valley Land Company and the Iowa Railroad Land Company, the object and prayer of which is to secure a decree forever quieting title in the plaintiff and divesting defendants of all right, title or claim in and to the northwest one quarter (¼) of the northeast one quarter (¼) of Section twenty-one (21), Township seventeen (17), Range eleven (11), Washington County, Nebraska, and praying for an injunction permanently enjoining the defendants and their grantees from asserting title thereto on the ground that the plaintiff is the owner thereof through deeds of purchase and conveyance and also by open, continuous, hostile, notorious, exclusive, uninterrupted and
12 adverse possession of said lands for more than ten years immediately preceding the commencement of this suit. That on the — day of September, 1903, said plaintiff filed an amended petition in said cause, the object and prayer of which is the same as in the original petition.

Affiant further states that said Missouri Valley Land Company and Iowa Railroad Land Company are foreign corporations and non-residents of this state and service of summons cannot be had upon them within the State of Nebraska.

JAMES H. VAN DUSEN.

Subscribed in my presence and sworn to before me this 18th day of September, 1903.

[SEAL.] NETTIE FLOREN,
Notary Public.

And afterwards, on the 5th day of October, 1903, there was filed in the office of said Clerk a certain Answer and Cross Petition of Missouri Valley Land Company and Iowa Railroad Land Company, in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,

vs.

THE UNION PACIFIC RAILROAD COMPANY, MISSOURI VALLEY LAND COMPANY, IOWA RAILROAD LAND COMPANY, Defendants.

Answer to Amended Petition and Cross Petition of Missouri Valley Land Company and Iowa Railroad Land Company.

For answer to plaintiff's amended petition and for Cross
13 Petition and Counter-Claim against plaintiff, the Defendants, Missouri Valley Land Company and Iowa Railroad Land Company, state:

First. Paragraphs one (1), two (2) and four (4) of said petition are true as therein stated.

Second. Paragraph three (3) of said petition these defendants deny.

Third. It is true as stated in paragraph five (5) of said petition that the Iowa Railroad Land Company claims a right and interest, to-wit: an undivided one-half interest and ownership in the land in question, and that neither the Sioux City and Pacific Railroad Company, the Missouri Valley Land Company, nor the Iowa Railroad Land Company have ever made any conveyance thereof to plaintiff or to any other person or corporation save the conveyance of said Railroad Company to said Missouri Valley Land Company and of said Missouri Valley Land Company to the Iowa Railroad Land Company as set forth in said petition, but that, on the contrary, the defendant, Iowa Railroad Land Company, succeeded to all the rights of said Sioux City and Pacific Railroad Company, and that the patent issued to said Missouri Valley Land Company, enured to the benefit of the title of said Iowa Railroad Land Company, which thereby became the owner in fee of an undivided one-half interest in said land.

Defendants deny that plaintiff has acquired or holds any title or interest in said undivided one-half interest, either through conveyance of The Union Pacific Railroad Company or otherwise, and deny that plaintiff has ever been in adverse, hostile, uninterrupted or exclusive possession thereof as against defendant Iowa Railroad Land
Company, under either a color of title or claim of right, but
14 defendants say that any possession of plaintiff or his alleged grantor has been as a tenant in common of the Iowa Railroad Land Company and in subservency to the title and rights of said Company.

Defendants deny all the allegations of paragraph five (5) and six (6) of said petition except as herein expressly admitted.

Fourth. Defendants state that the title to said real estate remained in the United States up to July 23rd, 1903, when a patent thereto issued from the United States to the Union Pacific Railroad Company and the Missouri Valley Land Company, whereby through previous mesne conveyance the title so conveyed to the Mis-

souri Valley Land Company became vested in the defendant Iowa Railroad Land Company. That the patent of September 23rd, 1897, to the Missouri Valley Land Company was issued through mistake and that in obedience to a ruling and demand of the Land Commissioner of the United States, the title was, on June 28th, 1898, reconveyed to the United States; that up to July 24th, 1903, the United States continued to hold title to said land and to exercise its jurisdiction to determine to whom the same should ultimately be patented and conveyed, and that in pursuance of such jurisdiction and against protest and demands of plaintiff who contested before the land department of the United States the right of these defendants and submitted thereto his claims in and to the lands in controversy, the Land Commissioner and Secretary of the Interior decided said controversy in favor of these defendants and ruled
15 and adjudged that patent issue to the said Missouri Valley Land Company for the benefit of these defendants. Defendants further show and submit that by reason of the premises plaintiff could not acquire title by adverse possession or by virtue of any statute of limitation while the title to said real estate so remained in the United States and while the rights of plaintiff and of these defendants were so in process of adjustment by proper officers of the United States. That the defendant Iowa Railroad Land Company, by virtue of the aforesaid patent of the United States, is now the sole and unqualified owner of an undivided one half of said land in fee simple and is entitled to the judgment and decree of this Court so adjudging and to be adjudged a tenant in common with plaintiff and to an accounting of the rents and profits of said real estate due the entire period of plaintiff's possession thereof.

Wherefore, defendants pray that plaintiff's petition be dismissed; that defendant Iowa Railroad Land Company be decreed to be the owner of an undivided one half interest of the real estate described in plaintiff's petition and a tenant in common thereof with plaintiff; that plaintiff be required to account to said defendant for the rents and profits thereof aforesaid and have judgment for whatever amount shall be found to be due said defendant, and that these defendants have judgment for costs of suit.

CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Defendants.

STATE OF IOWA, *Linn County, ss:*

I, P. E. Hall, being first duly sworn, say that I am Presi-
16 dent of the defendant, Iowa Railroad Land Company; that I have read the foregoing answer and that the same is true as I verily believe.

P. E. HALL.

Subscribed in my presence and sworn to before me by P. E. Hall this 3rd day of October, A. D., 1903.

[SEAL.] WM. G. CLARK,
Notary Public in and for Linn County, Iowa.

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And afterwards, on the 20th day of February, 1904, there was filed in the office of said Clerk, a second Amended Petition in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,
vs.
MISSOURI VALLEY LAND COMPANY and IOWA RAILROAD LAND COMPANY, Corporations, Defendants.

Second Amended Petition.

Comes now the plaintiffs, and with leave of court, files this, his second amended petition, and for his cause of action alleges:

First. That the defendants Missouri Valley Land Company and Iowa Railroad Land Company are each corporations, and that they each claim to have some interest in, or lien upon the land owned by this plaintiff and hereinafter described adverse to the interests of said plaintiff and are seeking to assert their right in opposition to
17 and adversely to the right and title of plaintiff.

Second. That in March, 1881, this plaintiff purchased from one Victor G. Lantry the Northwest quarter (¼) of the Northeast ¼ of Section twenty-one (21), Township Seventeen (17), Range Eleven (11), Washington county, Nebraska, and immediately went into possession of the same, and in the following Spring plowed, cultivated and enclosed said land with a substantial fence and has since remained in open, continuous, notorious and adverse possession thereof as the sole owner of the same. That thereafter, and on the 12th day of March, 1890, the Union Pacific Railroad Company conveyed title to said land to this plaintiff by warranty deed purporting to convey the entire interest, ownership and title of said land, which deed was filed for record in the office of the County Clerk of Washington County, Nebraska, on November 15th, 1890, and was recorded in Book 29 of deeds at Page 8, thereof. That ever since March, 1881, the plaintiff has been in possession of said property, has made improvements thereon consisting of good and substantial fences, and has at all times and dates up to the present time resided upon said land continuously and occupied, used and cultivated the same and the whole thereof, from year to year as the absolute owner thereof and has openly, adversely, hostilely, notoriously, exclusively and uninterruptedly occupied and possessed the same and has been and now is in open, public, continuous, peaceable, quiet, exclusive, and adverse possession of said property as against said defendants and each of them, and all persons whomsoever.

18 Third. That the above described land is included within the land grants made by the United States Government to the Union Pacific Railroad Company and the Sioux City and Pacific Railroad Company under acts of Congress of July 1, 1862, and July 2, 1864, and that said grants, at the point where said land is located,

overlapped, the land being within twenty miles of the right-of-way of the Union Pacific Railroad Company and within ten miles of the right-of-way of the Sioux City & Pacific Railroad Company. That each of said railroads complied with the provisions of said acts of Congress, the Union Pacific Railroad Company completing its road from Council Bluffs, Iowa, to Fremont, Nebraska, and having the same in operation prior to January 1st, 1870, and the Sioux City and Pacific Railroad Company completed its road from Sioux City, Iowa, to Fremont, Nebraska, and had the same in operation prior to January 1st, 1870.

That no patent was ever issued for said land until September 23rd, 1897, when a patent was granted to the Missouri Valley Land Company but said land was thereafter re-conveyed by said Missouri Valley Land Company to the Government of the United States and later a patent was issued jointly to the Union Pacific Railroad Company and the Missouri Valley Land Company.

Fourth. That the plaintiff has at all times since March, 1881, been in open, continuous, notorious, and adverse possession of all of said land as the sole and absolute owner thereof, cultivating the same and taking and appropriating all the crops grown thereon, and is now the sole and absolute owner of said land, and that
19 said patent title of the Missouri Valley Land Company constitutes a cloud upon plaintiff's title and he is without adequate remedy at law to remove the same.

Wherefore plaintiff prays that said defendants, and each of them be required to answer the allegations of this petition, that upon hearing of this cause, it may be ad-udged and decreed that the title of the plaintiff in and to said land is good and sufficient in law and equity as against each and all of the defendants and all persons claiming an interest in the title thereto by, through or under them; that plaintiff's title to said land may be quieted in him, and that the defendants and each of them and their grantee may be perpetually enjoined from asserting title to the above described premises or any part thereof, and for his costs in this suit, and for such other and further relief as equity may demand.

JAMES H. VAN DUSEN,
Attorney for Plaintiff.

STATE OF NEBRASKA, *County of Washington, ss:*

Carston Wrich, being first duly sworn, on oath says that he is the plaintiff in the above entitled action; that he has read the allegations contained in the foregoing second amended petition and believes them to be true.

CARSTON WRICH.

Subscribed in my presence and sworn to before me this 18th day of March, 1904.

[SEAL.] THEO. HALLER,
Clerk Dist. Court.

20 And afterwards, on the 18th day of April, 1904, there was filed in the office of said Clerk, a certain waiver of Summons and Entry of Appearance, in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD COMPANY, THE MISSOURI VALLEY LAND COMPANY, and IOWA RAILROAD LAND COMPANY, Defendants.

Waiver of Summons and Entry of Appearance.

The defendants, Missouri Valley Land Company, a corporation, and Iowa Railroad Land Company, a corporation, do hereby waive summons in the above entitled cause of action and hereby enter their voluntary appearance therein. Said defendants to have thirty days to answer.

Dated this 30th day of September, 1903.

THE MISSOURI VALLEY LAND COMPANY AND
IOWA RAILROAD LAND COMPANY,
Each by CHAS. A. CLARK & SON AND
WM. G. CLARK, *Their Attorneys in Fact and at Law.*

And afterwards, on the 18th day of April, 1904, there was filed in the office of said Clerk, a certain Answer and Counter Claim
21 in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTEN WRICH, Plaintiff,
vs.
MISSOURI VALLEY LAND COMPANY and IOWA RAILROAD LAND COMPANY, Corporations, Defendants.

Answer to Second Amended Petition, and Cross Petition of Missouri Valley Land Company and Iowa Railroad Land Company, Defendants.

For answer to the Second Amended Petition Herein the Defendants Missouri Valley Land Company and The Iowa Railroad Land Company state:

1st. Paragraphs 1 and 3 of said petition are true as therein stated.

2nd. Paragraphs 2 and 4 of said petition these defendants deny except as hereinafter expressly admitted.

3rd. For further answer and defense, and for counter-claim herein, defendants state:

That the Iowa Railroad Land Company is the absolute owner in fee simple of the undivided one-half interest in the land described in

plaintiff's petition, to-wit: the Northwest one quarter (¼) of the Northeast one quarter (¼) of Section 21, Township 17, Range 11, Washington county, Nebraska, and that the said land was within the overlapping limits of the grants by the United States to The Union Pacific Railroad Company, and to the Sioux City and Pacific Railroad Company under act of Congress, July 1st, 1862, and of July 2nd, 1864, and that by reason of said facts a conflict and contest arose between The Union Pacific Railroad Company and these defendants as successors in interest to the Sioux City and Pacific
22 Railroad Company, and by mesne conveyances from said Sioux City & Pacific Railroad Company to the defendant, Missouri Valley Land Company and from the Missouri Valley Land Company to the Iowa Rail Road Land Company, whereby all the rights and title of the Sioux City & Pacific Railroad Company under said grants when finally adjusted were conveyed to and became vested in the defendant the Iowa Rail Road Land Company.

That by reason of the limits of said grants overlapping, a contest and conflict was initiated, and remained pending in the Land Office of the United States at Washington, and before the Department of the Interior, between The Union Pacific Railroad Company and these defendants as successors in interest of the Sioux City & Pacific Railroad Company, which contest involved the title to the land in question and the claims of the respective parties under the aforesaid grants, which contest remained open and undetermined as to the lands in question, and a large amount of other land between the aforesaid parties, until the 24th day of July, 1903, when it was adjudged by said Land Commissioner, and by the Secretary of the Interior that the land involved within the overlapping limits of said grants, including the land in question, should be conveyed and patented by the United States to the said The Union Pacific Railroad Company, and to the successor in interest of said Sioux City & Pacific Railroad Company, jointly, and that said grantees should take and hold lands as tenants in common.

These defendants further state that the Commissioner of the General Land Office of the United States and the Secretary of the Interior under the grants aforesaid had power, authority and
23 jurisdiction to determine and adjust the respective claims of the aforesaid parties, and that pending such final adjustment and decision of said officials, and pending the final issuance of a patent to said real estate, the right and title to said real estate remained in the United States, and was so held in abeyance that plaintiff could in no manner obtain any right, title or claim thereto by adverse possession, or otherwise, but that on the contrary any alleged possession by plaintiff of said real estate was in subserviency to the legal title so remaining in the United States, and was in no manner adverse or hostile to defendants' right and title thereto when the same should be finally adjudged and determined by said Land Commissioner and Secretary of the Interior of the United States.

4th. These defendants further state that the plaintiff, Carsten Wrich, on or about the 25th day of September, 1893, undertook to

make a cash entry of the real estate in question at the Land Office of the United States at Neligh, Nebraska, under the Act of March 3rd, 1887, and that thereafter such proceedings were had as to the right of the said plaintiff, Carsten Wrich, to said real estate under said entry was on or about the 28th day of April, 1896, on appeal by the Sioux City & Pacific Railroad Company to the Secretary of the Interior adjudged to be wrongful and in conflict with the rights of said Sioux City & Pacific Railroad Company under its aforesaid grant, and adjudged to be *cnac*elled unless said Wrich, after due notice, should adduce other and sufficient reason for holding said land to be excepted from said grant. And that thereafter such proceedings were had as that on the 25th day of August, 1896,
24 the Land Commissioner of the United States finally adjudged that said entry by said plaintiff under said Act of March 3rd, 1887, was wrongful and that the same should be on said day finally cancelled. That the Land Commissioner of the United States, and Secretary of the Interior had jurisdiction under the Acts of Congress to pass upon and determine the validity of plaintiff's claim, and of the contest so initiated and pending between plaintiff and defendant's grantor, the Sioux City & Pacific Railroad Company, and to make said order for the cancellation of plaintiff's entry and claim to said real estate.

That pending said final determination of said contest to which plaintiff was a party touching said real estate before the — Commissioner of the United States and the Secretary of the Interior, plaintiff's alleged possession in and to said real estate was in subserviency to the title of the United States thereto, and to the final judgment and decision of said officials touching plaintiff's right and claims thereto, and that thus and thereby plaintiff in no sense was in adverse possession to said real estate while said contest was pending before the aforesaid officials of the United States and up to the date of the final determination of said controversy by the issuance of said patent as aforesaid to the Union Pacific Railroad Company and to the Missouri Valley Land Company as successors in interest of the Sioux City & Pacific Railroad Company.

That the final decision of the Commissioner of the General Land Office and the Secretary of the Interior of the United States adjudging said land to be patented jointly as aforesaid is not
25 subject to review or collateral attack in or by this honorable court, and that thereby and by the issuance as aforesaid of said patent to the said Missouri Valley Land Company the aforesaid patent inured to the benefit of the defendant, Iowa Railroad Land Company, under a certain conveyance from the said Missouri Valley Land Company to it made and executed, on or about the — day of ——, 18—, and that thus and thereby the defendant, the Iowa Railroad Land Company, became the owner of the one undivided half interest in and to the aforesaid real estate.

5th. That the patent of July 23rd, 1897, to the Missouri Valley Land Company was issued through mistake, and that in obedience to the ruling and demand of the Land Commissioner of the United States made on or about the 17th day of May, 1898, the said land

was thereafter, on or about the 28th day of June, 1898, re-conveyed by said Missouri Valley Land Company to the United States subject to the final decision of the Land Commissioner and Secretary of the Interior of the aforesaid contests touching said real estate.

Defendants further show that the possession of plaintiff in and to said real estate was not adverse, hostile or exclusive, for the plaintiff held the same as successor in interest of The Union Pacific Railroad Company, and subject to the final judgment of the Land Commissioner of the United States, and the Secretary of the Interior, as to the rights, title and claim of said Railroad Company thereto, and the plaintiff's aforesaid possession has been as tenant in common with the Iowa Railroad Land Company, successor in interest to The Union Pacific Railroad Company, and not otherwise.

That by reason of the premises and by virtue of the afore-
26 said patent of the United States, and defendant, the Iowa Railroad Land Company, is now the sole and unqualified owner of the undivided one half of said land in fee simple, and is entitled to a judgment and decree of this Court so adjudging, and to be adjudged a tenant in common with plaintiff as grantee of the said Union Pacific Railroad Company, and to an accounting of the rents and profits of said real estate during the entire period of plaintiff's possession thereof.

Wherefore, defendants pray that plaintiff's petition be dismissed and that defendant, the Iowa Railroad Land Company, be decreed to be the owner of an undivided one-half interest of the real estate described in plaintiff's petition, and a tenant in common thereof with plaintiff. That plaintiff be required to account to said defendant for the rents and profits thereof aforesaid and for judgment for whatever amount shall be found to be due said defendant, and that these defendants have judgment for costs of suit.

CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Defendants.

STATE OF IOWA, *Linn County, ss:*

I, P. E. Hall, being first duly sworn, say that I am President of the defendant, the Iowa Railroad Land Company; that I have read the foregoing Answer, and that the same is true as I verily believe.

P. E. HALL.

27 Subscribed in my presence and sworn to before me this 15th day of February, A. D. 1904.

[SEAL.] SARAH F. SUFFICOOL,
Notary Public in and for Linn County, Iowa.

And afterwards, on the 18th day of April, 1904, there was filed in the office of the Clerk of said Court a certain Reply to Answer to Second Amended Petition and Cross Petition, in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTON WRICH, Plaintiff,

v.

MISSOURI VALLEY LAND COMPANY & IOWA RAILROAD LAND COMPANY, Corporations, Defendants.

Reply to Answer to Second Amended Petition and Cross Petition.

Comes now the plaintiff and for reply to the answer and cross-petition filed by the defendants to the second amended petition of the plaintiff filed herein and says:

First. Plaintiff denies that the Iowa Railroad Land Company is the owner in fee of the undivided one-half interest in the North-west quarter (¼) of the Northeast quarter (¼) of Section Twenty-one (21), Township seventeen (17), Range eleven (11), Washington county, Nebraska, but plaintiff admits that said land was within the overlapping limits of the grants by the United States to The Union Pacific Railroad Company and to the Sioux City & Pacific
28 Railroad Company under Acts of Congress of July 1, 1862, and July 2, 1864, as to the allegations in relation to a conflict and contest between The Union Pacific Railroad Company and the answering defendants, and as to the conveyances from the Sioux City & Pacific Railroad Company to the Missouri Valley Land Company, and from the Missouri Valley Land Company to the Iowa Railroad Land Company, as set forth in said answer, this plaintiff has no knowledge or information thereof sufficient to form a belief and therefore denies the same and asks that the defendants make strict proof thereof.

Replying to the allegations of the contest and conflict in the Land Office of the United States at Washington and before the Department of the Interior between The Union Pacific Railroad Company and the answering defendants, as set forth in said answer, this plaintiff has no knowledge or information thereof sufficient to form a belief and therefore denies each and every allegation in relation thereto and asks that the defendants make strict proof thereof. This plaintiff specifically denies that the Commissioner of the General Land Office of the United States and the Secretary of the Interior, or either of them, has any power, authority or jurisdiction under the land grants aforesaid to determine any question relating to the right or title to said real estate after the right of way of The Union Pacific Railroad Company and the Sioux City & Pacific Railroad Company had been located and which was, as plaintiff alleges, prior to January 1, 1870; and in this connection alleges that immediately upon the location of the right of way of said Railroad Company, or of
29 the line of railway of said railway companies, the title to the land above described passed, from the United States Government and neither the General Land Office of the United States, nor the Secretary of the Interior had any authority or jurisdiction thereover.

Second. Replying to paragraph fourth of the said answer of the defendants, this plaintiff alleges, that he has no personal knowledge with reference to the filing in the United States Land Office at Neligh, Nebraska, under the act of March 3, 1887, as therein set forth, or as to after proceedings had thereon, as alleged in said answer, sufficient to form a belief and therefore denies the same and asks that the defendants make strict proof thereof.

Further replying in this connection, plaintiff alleges that the Land Commissioner of the United States and the Secretary of the Interior, and each of them, were without authority or jurisdiction to determine any question affecting the right or title to the land in question after January 1, 1870, for previous to that date the title to said land had passed from the United States Government by virtue of the land grant Acts of July 1, 1862, and July 2, 1864, and thereafter the United States Government and its General Land Office and the Secretary of the Interior had no jurisdiction over the same and no power or authority to determine any question in relation to the title thereto and that any adjudication made by said Land Commissioner or the Secretary of the Interior was absolutely null and void.

Third. Plaintiff denies each and every allegation in said answer contained not hereinbefore specifically denied.

Wherefore plaintiff prays judgment as in his petition.

JAMES H. VAN DUSEN,
Attorney for Plaintiff.

STATE OF NEBRASKA, *County of Washington, ss:*

Carston Wrich, being first duly sworn, on oath says that he is the plaintiff above named; that he has read the allegations of the foregoing reply and that the same are true as he verily believes.

CARSTON WRICH.

Subscribed in my presence and sworn to before me this 18th day of March, 1904.

THEO. HALLER,
Clerk District Court.

And afterwards, on the 18th day of April, 1904, there was entered of record in the office of said Clerk a certain Journal Entry, in words and figures following, to-wit:

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILROAD COMPANY ET AL., Defendants.

Journal Entry.

Now on this day this cause comes on for trial to the Court and all the parties herein being present by their respective counsel and after the statement of the case by counsel and taking of testimony is begun and completed and the hour of adjournment having arrived

it was agreed by all the parties herein that arguments of coun-
31 sel in the case be presented to the Court in the City of Omaha, Nebraska.

And afterwards, on the 24th day of October, 1904, there was filed in the office of said Clerk a certain Decree in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTON WRICH, Plaintiff,
vs.
MISSOURI VALLEY LAND COMPANY, and IOWA RAILROAD LAND COMPANY, Corporations, Defendants.

Decree.

This cause having been heretofore submitted to the Court on the pleadings and evidence adduced in open Court now comes on for final judgment and decree, and the Court after due consideration finds in favor of the plaintiff and against the defendants Missouri Valley Land Company and Iowa Railroad Land Company, corporations, and that the allegations in plaintiff's petition are true, and he is entitled to the relief prayed.

It is therefore ordered, adjudged and decreed, that the title of the plaintiff Carston Wrich in and to the Northwest quarter of Section Twenty-one, Township Seventeen, Range 11, Washington county, Nebraska, is good and perfect in law and equity, and the same is hereby quieted in Carston Wrich; and it is further ordered, adjudged and decreed that the Missouri Valley Land Company,
32 and Iowa Railroad Land Company, and their successors in interest and each of them be, and they hereby are perpetually enjoined from interfering with the right, title or possession of the plaintiff herein, in and to said real estate, and they are further perpetually enjoined from asserting any right, title or claim to the same, and that the plaintiff recover his costs herein expended, taxed at $—, and execution is awarded therefor. And the cause of action set up in the cross-petition of the Iowa Railroad Land Company is hereby dismissed.

To all of which the defendants, and each of them except.

Dated October 24th, 1904.

By the Court,

E. M. BARTLETT, *Judge.*

And afterwards, on the 24th day of October, 1904, there was filed in the office of said Clerk a certain Motion for New Trial in words and figures following, to-wit:

In the District Court of Washington County, Nebraska.

CARSTON WRICH, Plaintiff,
vs.
UNION PACIFIC RAILROAD COMPANY, MISSOURI VALLEY LAND COMPANY, IOWA RAILROAD LAND COMPANY, Defendants.

Motion for New Trial on Behalf of Missouri Valley Land Company and Iowa Railroad Land Company.

The Missouri Valley Land Company and the Iowa Rail-
33 road Land Company, defendants, each for itself, respectfully moves the Court to set aside its decision, judgment and decree rendered herein on the 24th day of October, A. D. 1904, and to grant a new trial of this cause on the following grounds:

1. That said decision, judgment and decree is not sustained by sufficient evidence.

2. That said decision, judgment and decree is not sustained by any evidence.

3. That said decision, judgment and decree is contrary to law.

4. That said decision, judgment and decree is contrary to the evidence.

5. That said decision, judgment and decree is contrary to the action and judgment of the Land Commissioner of the United States and of the Secretary of the Interior of the United States.

6. That said decision, judgment and decree has the effect to collaterally impeach and set aside the judgment and action of the Land Commissioner of the United States, and of the Secretary of the Interior of the United States when acting within their powers and jurisdiction.

7. For errors of law occurring at the trial and excepted to by these defendants at the time.

8. For that said decision, judgment and decree does not give due faith and credit to the decision and judgment of the Land Commissioner of the United States.

9. For that the said decision, judgment and decree does not give proper credit and effect to the patent of the United States
34 granting one undivided half of the land in question to Missouri Valley Land Company as successor in interest of the Sioux City and Pacific Railroad Company.

10. For that on all the evidence and record in said cause the decision, judgment and decree of this court should be that the Missouri Valley Land Company, as successor in interest of the Sioux City and Pacific Railroad Company, is the owner and entitled to the immediate possession of one undivided half of the land in controversy herein.

11. For that on all of the evidence and record in the cause, the decision, judgment and decree of this court should be that the Iowa Railroad Land Company, as successor in interest of the Sioux City & Pacific Railroad Company and Missouri Valley Land Company is

the owner and entitled to the immediate possession of one undivided half of the land involved in this action.

12. For that the said decision, judgment and decree is contrary to the evidence in that it denies to these defendants, and each of them, an accounting of the rents and profits of said land as prayed in their answer and counter-claim.

13. For that said decision, judgment and decree does not give proper credit and effect to the action of the Land Department of the United States in awarding one undivided half of the land in controversy, to the Missouri Valley Land Company, successor in interest of the Sioux City and Pacific Railroad Company in a contest before the Land Department initiated and prosecuted by the plaintiff in the present action.

35 14. For that plaintiff could not acquire title by adverse possession during the time that his claims to said land were pending before the Land Department of the United States, and that this court, in awarding plaintiff judgment and decree for the title to said real estate, has not given legal weight and effect to the action of the Land Department of the United States when so acting within its powers and jurisdiction.

15. For that the Court has erred in holding that the possession of plaintiff to the land in question was adverse during the time that his claims were pending before the Land Department of the United States on his application to purchase said land under the act of Congress, approved March 3rd, 1887.

CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Missouri Valley Land Company, and Iowa Railroad Land Company, Defendants.

And afterwards, on the 24th day of October, 1904, there was entered of record in the office of said Clerk a certain Journal Entry in words and figures following, to-wit:

CARSTEN WRICH, Plaintiff,
vs.
MISSOURI VALLEY LAND COMPANY, IOWA RAILROAD LAND COMPANY, Corporations, Defendants.

Journal Entry.

36 Now on this day this cause comes on to be heard upon the motion of the defendants, Missouri Valley Land Company and Iowa Railroad Land Company, for a new trial and the Court, being fully advised in the premises, overrules said motion for a new trial, to which ruling said defendants duly except, and are by the Court allowed forty days from the rising of the Court in which to prepare and serve and file said bill of exceptions.

January 17th, 1905, This term of court adjourned sine die.

THE STATE OF NEBRASKA, *Washington County, ss:*

I, Theo. Haller, Clerk of the District Court in and for Washington county, Nebraska, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings in the case of Carsten Wrich against The Union Pacific Railroad Company, the Sioux City & Pacific Railroad Company, Missouri Valley Land Company as fully as the same remain on file and of record in my office.

I further certify that the bill of exceptions hereto attached is the original bill of exceptions filed in my office in the above entitled action.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Seal of said District Court this 28th day of February, A. D. 1905.

[SEAL.] THEO. HALLER, *Clerk.*

Clerk Dist. Court for Transcript 10335	$10.35
Certificate	.25
	$10.60

Pd. by Def't Iowa Railroad Land Co.

37 Endorsed: 14233. Carston Wrich *vs.* The Union Pacific Railroad Company, *et al.* Transcript. Supreme Court of Nebraska. Filed Apr. 15 1905. H. C. Lindsay, Clerk.

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Bill of Exceptions, which said original Bill of Exceptions, per stipulation of parties, is attached hereto, and is in the words and figures following, to-wit:

38 In the District Court of Washington County, Nebraska.

CONRAD WRICH, Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, MISSOURI VALLEY LAND COMPANY, and IOWA RAILROAD LAND COMPANY, Defendants.

I, Theo. Haller, Clerk of the District Court of Washington County, Nebraska, do hereby certify that the within bill of exceptions was presented to me for allowance this 30th day of January, 1905, within the time allowed therefor by the order of said court; that the term of Hon. Edmund M. Bartlett, presiding Judge of said court at the time the proceedings herein set forth has expired, and it appearing to me that said exceptions have been duly served on the attorney for plaintiff and returned by him without objection or suggestion of amendment, I find the within bill of exceptions to be true and correct as therein stated, and to truly and correctly set forth all of the evidence introduced or offered at the trial of said cause, and all of the exceptions taken and proceedings had thereon, in-

cluding the exceptions of defendants to the decree herein, and at the request of defendants, Iowa Railroad Land Company and Missouri Valley Land Company, I do hereby settle and allow said exceptions as herein set forth, and order the same to be made of record in said cause.

In witness whereof, I, Theo. Haller, as clerk aforesaid, have set my name and affixed the seal of said court this 30th day of January, 1905.

[Seal District Court, Washington County, Nebraska.]

THEO. HALLER,
Clerk of the District Court of
Washington County, Nebraska.

39 In the District Court of Washington County, Nebraska.

Doc. T., Fol. 500, No. 1454.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

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40 In the District Court of Washington County, Nebraska.

Doc. T., Fol. 500, No. 1454.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, THE MISSOURI VALLEY LAND COMPANY, and THE IOWA RAILROAD LAND COMPANY, Defendants.

Received this bill of exceptions from the defendant for correction and amendment, being the case of Carston Wrich plaintiff *vs* The Union Pacific Railway Company *et al.*, defendants.

Dated Dec. 24th, 1904, Omaha, Nebr.

JAMES H. VAN DUSEN,
Att'y for Plaintiff.

I herewith return this bill of exceptions in the case of Carston Wrich, plaintiff, *vs.* the Union Pacific Railway Company *et al.*, defendants, Doc. T., Fol. 500, No. 1454 and suggest the following amendments:

JAMES H. VAN DUSEN,
Att'y for Pl'ff.

Dated Jan. 9th 1905, Omaha, Nebr.

41 It is agreed by and between the parties hereto, that the following is a full, true and complete transcript of all the oral evidence, together with copy of the exhibits introduced in said case and all exceptions, objections and rulings of the court thereon, in the case of Carston Wrich, plaintiff against the Union Pacific Railway Company *et al.*, defendants, and we hereby agree that the same may be made a part of the record in this case and that the same is a full and complete record of same as hereinbefore stated.

Dated —— —, 1904, Omaha, Nebr.

——— ———,
Att'y for Pl'ff.

Dated —— —, 1904, Omaha, Nebr.

——— ———,
Att'y for Def't.

42 In the District Court of Douglas County, Nebraska.

Doc. T., Fol. 500, No. 1454.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY, THE MISSOURI VALLEY LAND COMPANY, and THE IOWA RAILROAD LAND COMPANY, Defendants.

The within is all of the evidence offered or given upon the trial of the cause entitled Carston Wrich, Plaintiff, *vs.* the Union Pacific Railway Company, the Missouri Valley Land Company, and the Iowa Railroad Land Company, corporations, defendants, that the within and following bill of exceptions contain a complete record of all the oral proceedings had at and during the trial of said cause, with full true and complete copies of all documentary evidence offered or received in evidence during such trial.

——— ———,
Judge District Court, Washington County, Nebraska.

43 In the District Court of Washington County, Nebraska.

Doc. T., Fol. 500, No. 1454.

CARSTON WRICH, Plaintiff,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

Be it remembered that on the trial of the above entitled cause at the April, 1904 term of the District Court, in and for Washington County, Nebraska, the following proceedings were had, to wit:

BLAIR, NEBR., *April 18th*, 1904.

On this day this cause coming on for hearing before his Honor E. M. Bartlett, Judge, J. H. Van Dusen, Esq., appearing for the

Plaintiff and William G. Clarke, Esq., appearing for the defendant, testimony was taken as follows:

CARSTON WRICH, the plaintiff, sworn in his own behalf, examined in chief by Mr. Van Dusen, testified as follows:

CLAUS MINCKE, sworn as interpreter, interpreted as follows:

6 Q. State your name?
A. Carston Wrich.
7 Q. Where do you live?
A. South of Kennard.
8 Q. On this county?
A. Yes, sir.
9 Q. Are you acquainted with the plaintiff in this case?
A. I think so.
10 Q. How long have you lived in this county?
A. Since 1869.
11 Q. Do you know the land described as the Northwest quarter of the Northeast quarter of Sec. 21, Township 17, Range Eleven, Washington County, Nebraska?
A. Yes, sir.
12 Q. Where is that land?
A. South of Kennard.
13 Q. How close do you live to it?
A. About 30 rods.
14 Q. Have you ever farmed the land?
A. Yes, sir.
15 Q. When did you first commence to farm it?
A. I think in 1881, or 1882. In 1881 I broke it.
16 Q. From whom did you buy the land?
A. From Mr. Langtry.
17 Q. What was Mr. Langtry's full name?
45 A. I do not remember.
18 Q. Was it Victor G. Langtry?
A. Yes, I think so.
19 Q. After you bought the land, did you go into possession of it?
A. Yes, sir.
20 Q. When did you go into possession of it?
A. When I bought it, the same spring.
21 Q. What did you do with the land that year?
A. I had a part of it in pasture and broke the rest.
22 Q. Was there any fence on it?
A. The same year?
23 Q. Has it been fenced ever since that time?
A. Oh, yes.
24 Q. Is it all enclosed, is the fence all around it?
A. All except the south side. I own 40 on the south.
25 Q. How much other land do you own surrounding that?
A. 100 acres, in that section.
26 Q. Does that adjoin this land?
A. Yes, sir.

27 Q. From 1881 down to the present times, state if you have farmed the land every year?
A. Yes, sir.
28 Q. Has anybody else farmed it?
A. No, sir.
29 Q. Has anyboy else been in possession of it at any time?
A. No, sir.
30 Q. Have you claimed to own it during that time?
A. Yes, sir.
46 31 Q. How far is this land from the Sioux City & Pacific R. R. Company's right of way or railroad?
32 Q. That goes through Kennard.
A. Yes?
33 Q. About three miles.
34 Q. State what you have raised on that farm through this period, since 1881, the kind of crops that you have raised on it?
A. Wheat, oats, corn, barley and other things.
35 Q. Has the whole of the 40 acres been farmed, either by farming crops or meadow?
A. Yes, sir.
36 Q. State if you obtained a deed from the Union Pacific railroad?
A. Yes, sir.
37 Q. State where the contract is that you had from the Union Pacific railroad company?
A. I think I burned it.
38 Q. What was that a contract for?
A. It was for the land that they had, a time of six years to pay for the land.
39 Q. What was you to pay for the land?
A. I gave Mr. Langtry two dollars and the Company ten dollars.
40 Q. For the whole thing, or per acre?
A. Per acre.
41 Q. Ten dollars an acre to the Company and two dollars to Mr. Langtry?
A. Yes, sir.
42 Q. Did you afterwards get a deed for the land?
A. Yes, sir.
43 Q. During all this period of time, have you claimed to
47 be the owner of this land?
A. Yes, sir.
44 Q. Has anybody else at any time been in possession or custody or control over the matter?
A. No, sir.
45 Q. Has the Missouri Valley Land Company ever made any claim to you for this land?
A. No, sir. There was somebody at my place at one time.
46 Q. When was any one at your place?
A. It was at the time when the company wrote me. It might have been ten years ago, for all I know. I do not remember.
47 Q. Did anybody else ever come to see you for the Missouri Valley Land Company?

A. No, sir.

48 Q. Was the man that came to see you in possession of the land at any time?

A. No, sir.

49 Q. Did the Sioux City & Pacific Railroad Company ever make any claim for the land?

A. No, sir.

50 Q. Do you know anything of the Iowa Railroad Land Company?

A. No, sir.

48 Cross-examination.

By Mr. CLARK:

51 Q. You entered into possession of the land in the spring of 1881?

A. I think in March, 1881.

52 Q. You purchased the right of Victor G. Langtry. Did he hold a contract of purchase of the land under the Union Pacific Railroad Company?

A. Yes, sir.

53 Q. How much remained unpaid on that contract, when you bought from Mr. Langtry?

A. I do not know.

54 Q. How much did you pay the railroad company, before you obtained your deed in 1890?

A. $400.00 and interest. I do not remember exactly the payments.

55 Q. Until you had paid the $400.00 to the railroad company, and interest, you simply had a contract for a deed, did you not?

A. Yes, sir.

56 Q. Did you have that contract direct with the railroad company. Did they give you a contract after you bought of Mr. Langtry?

A. Mr. Langtry gave me the contract.

57 Q. Then, Mr. Langtry had a contract for a deed, before you bought of Mr. Langtry, is that correct?

A. I do not know.

58 Q. What I want to know is whether Mr. Langtry had a contract with the railroad Company for a deed when he paid
49 that $400.00, and you bought the contract from Mr. Langtry, is that correct?

A. I have no knowledge of it.

59 Q. Did you ever have a contract with the Union Pacific Railroad Company to buy this land for ten dollars an acre?

A. Yes, and Mr. Langtry made out the contract.

60 Q. You completed paying the $400.00 about the spring of 1890 to the Union Pacific Railroad Company, did you?

A. No, sir.

61 Q. When did you complete the payment for the land?

A. I think it was in 1887. I had it on six years' time, and it has been in 1887.

62 Q. When did you get your deed from the Union Pacific Railroad Company?

A. The same year, I think.

63 Q. How soon after you paid for the land, all of the $400.00 did you get the deed from the Union Pacific Railroad Company?

A. I cannot tell.

64 Q. Was it very soon after you paid for the land?

A. I do not remember. I cannot tell.

65 Q. Tell as nearly as you can, how soon after you completed paying for the land you received your deed?

A. I think the same year.

66 Q. Before you received your deed, you simply had a contract that the railroad company would deed you the land when you had paid for it, at the rate of ten dollars an acre, did you not?

A. Yes, sir.

67 Q. And that contract, you entered into with the railroad company, in the spring of 1881, is that correct?

50 A. Yes, sir. With Mr. Langtry.

68 Q. Mr. Langtry was the agent of the Railroad Company was not he, of the Union Pacific Railroad Company?

A. Yes, sir.

69 Q. Your contract was with the Union Pacific Railroad Company, Mr. Langtry being their agent, is that correct?

A. Yes, sir.

70 Q. What is that land worth a year, what would be the fair rental of it?

Mr. VAN DUSEN: I would rather you make him your own witness, because my view is that this is incompetent, immaterial and irrelevant, and I object to it for that reason.

Mr. CLARK: I will make the witness my own.

The COURT: The objection is overruled, plaintiff excepts.

The question is read to the witness.

A. $2.50.

71 Q. Do you mean two and a half dollars an acre a year?

A. Yes, now.

72 Q. How long has it been worth $2.50 an acre a year for the rental?

Objected to as incompetent, immaterial and irrelevant, overruled, plaintiff excepts.

A. Two years.

73 Q. For five years before that what was the fair rental value, per acre, per year?

A. Two dollars.

51 74 Q. From 1890 to 1897 what was the fair rental value per acre, per year for this land?

A. It was share land. You could not rent it for cash very well.

75 Q. What would it have been worth in cash?

A. I do not know.

76 Q. State as nearly as you can what you think a fair cash rental has been for those years from 1890 to 1897?

Objected to as incompetent, immaterial and irrelevant, overruled, plaintiff excepts.

A. It is hard to tell.

77 Q. Tell as near as you can?

Objected to as having already been answered, sustained defendant excepts.

78 Q. State if it would have been fairly worth a dollar an acre, per year from 1890 to 1897?

Objected to as leading and having been answered, sustained, defendant excepts.

79 Q. I would like to have you state whether this land was of any value as a matter of rent from 1890 to 1897, and if so, as nearly as you can, how much the value was per acre, per year?

A. $1.50.

80 Q. Per acre per year?

A. Yes, sir.

52 JOHN JAPP, sworn for the plaintiff, examined in chief by Mr. Van Dusen testified as follows:

81 Q. What is your name?

A. John Japp.

82 Q. Where do you live?

A. Richland Township, Washington County.

83 Q. How long have you lived in Washington County?

A. From 1868.

84 Q. Since 1868?

A. Yes, sir.

85 Q. Are you acquainted with Carston Wrich, the plaintiff?

A. Yes, sir.

86 Q. How long have you known him?

A. I believe he came there in 1869.

87 Q. Do you know where Mr. Wrich lives now?

A. Yes, sir.

88 Q. How close do you live to him?

A. I live a little over, now, I moved to Kennard, in the village. Before it was about two miles.

89 Q. Do you know this quarter section of land or this 40 acres of land that Mr. Wrich bought of Mr. Langtry?

A. Yes, sir.

90 Q. When did he buy that?

A. I do not know, I think it was in 1881 or 1882, I could not say exactly.

91 Q. Did you buy some land at the same time?

A. I did.

92 Q. Where did you live with reference to this land at that time?

53 A. I lived pretty nearly two miles north of there.

93 Q. What did Mr. Wrich do, after he bought the land?

A. After he bought he worked it.

94 Q. In the year 1881, did you go by the land any?

A. Past it, yes, sir. I was close by it.

95 Q. How often would you see the land?

A. Twice a month.

96 Q. Was there any fences on it?

A. When he got it, no.

97 Q. Not when he bought it, did he put a fence on it afterwards?

A. Yes, sir.

98 Q. How soon afterwards?

A. I think the same year.

99 Q. Did that go around the whole 40?

A. I believe on three sides.

100 Q. And on the other, who owned the land?

A. He had some more land there.

101 Q. During 1881, did he farm the land there?

A. I believe he broke up the land first.

102 Q. Take each year following that, down to the present time, have you seen the land each year?

A. Yes, sir.

103 Q. How often would you see it?

A. Twice a month.

104 Q. Has he farmed it since that time?

A. Yes, sir.

105 Q. What kind of crops has he raised on it?

A. I believe everything, corn, wheat, barley and oats.

106 Q. Is there some meadow land?

A. No, I believe not. There might have been some

54 potatoes.

107 Q. And some pasture land or meadow?

A. No, not lately.

108 Q. Did he use the whole forty acres or only a part of it?

A. He worked it altogether, the whole forty.

109 Q. Has anybody else been in possession of that land during this time?

A. No, sir.

110 Q. You have seen it each year?

A. Yes, sir.

111 Q. And know whether that is a fact or not?

A. Yes, sir.

112 Q. Do you know what Mr. Wrich has done towards claiming the land? Do you know whether he has claimed it as his own?

A. He claimed it for his own.

113 Q. How close does this land lie to the railroad that runs to Kennard, the Sioux City & Pacific Railroad Company?

A. I believe about four miles, four or five miles I believe.

114 Q. How far is it away from the Union Pacific Railroad Company that comes from Omaha?
A. I could not say exactly.
115 Q. Don't you know about how far it is?
A. Maybe it is 16. I could not say exactly.
116 Q. About 16 miles?
A. That is what I guess.
117 Q. Did you ever own any land adjoining this?
A. Yes, I bought forty acres.
118 Q. Where was your 40 acres with reference to this 40?
55 A. East from that, adjoining.
119 Q. Did it adjoin it?
A. Yes, sir.
120 Q. When did you buy that?
A. In 1881, or 1882.
121 Q. Were you with Mr. Wrich when he bought it of Mr. Langtry?
A. Yes, sir.
122 Q. Do you know what he paid Mr. Langtry for it, or what he was to pay?
A. I do not know what he paid.
123 Q. You do not know about that matter?
A. No, sir.
124 Q. Has anybody else ever been in possession of this land since 1881, except Mr. Wrich?
A. No, except Mr. Wrich.
125 Q. There is no one else?
A. No, sir.

Cross-examination.

By Mr. CLARK:

126 Q. You spoke of Mr. Wrich buying of Mr. Langtry, you mean, of course, that he bought of the railroad company, and Mr. Langtry acting as their agent, do you?
A. I do not know which way. He bought it, I could not say whether Mr. Langtry was the agent. He let us know that he had it for sale. I bought the forty across, and when I came to Mr. Langtry, he told me it cost $12.00 an acre.
127 Q. Mr. Langtry was agent of the Union Pacific Rail-
56 way Company, was he not?
A. I think he was.
128 Q. That is your understanding?
A. Yes, sir.
129 Q. And this land he sold as agent of the Union Pacific Railway Company?
A. Yes, sir.

Wiese

THEODORE WEISS, sworn for the plaintiff, examined by Mr. Van Dusen, testified as follows:

130 Q. What is your name?

Wiese

A. Henry Theodore Weiss.

Wiese

131 Q. Are you related to Asmus Weiss?

A. Yes, his son.

132 Q. Do you know Mr. Wrich?

A. Yes, sir.

133 Q. Where do you live?

A. North east of Mr. Wrich's, in the same section.

134 Q. How old are you?

A. 45 past.

135 Q. How long have you lived in this county?

A. Ever since 1869.

136 Q. Do you know this 40 acres of land or Mr. Wrich's that we are talking about?

A. Yes, it joins my corner.

57 137 Q. Do you live there now, on the adjoining farm?

A. Yes, sir.

138 Q. When did Mr. Wrich first go into possession of the land, if you know?

A. I think it was in 1881, or 1882, somewhere in there.

139 Q. Did you live there at that time?

A. Yes, sir.

140 Q. And have lived there ever since?

A. Yes, sir.

141 Q. How often would you see the land during all those years?

A. Every day I was out doors.

142 Q. And you were out doors every day during the summer were you?

A. Yes, I think I was, unless it rained all day.

143 Q. When Mr. Wrich went into possession in 1881, or 1882 what did he do if anything towards putting a fence around the land?

A. He broke part of it and a part of it was pasture.

144 Q. Did he put in any fence around the land?

A. Yes, sir.

145 Q. When did he put the fence around?

A. I think the first year that he bought the land, the same summer.

146 Q. Did that go around the whole 40 acres?

A. Three sides.

147 Q. What was on the other side?

A. He had some more land adjoining the south.

148 Q. Did he farm the land on the south, also?

A. Yes, sir.

58 149 Q. Has that 40 acres been farmed every year since that time?

A. Yes, sir.

150 Q. And by whom has it been farmed?

A. Mr. Wrich.

151 Q. Did you see anybody else except Mr. Wrich or his help, or boys farming the land?

A. No, not only but his boys.

152 Q. Do you know whether he has claimed to own the land or not?

A. Yes, sir.

153 Q. Has he always claimed to own the land?

A. Yes, sir.

154 Q. How much of it has been farmed each year?

A. I do not know how much of the 40. I think about 30 acres.

155 Q. And that that was not farmed, what was that used for?

A. In pasture.

156 Q. You mean by 30 acres that was farmed?

A. It was planted to crops, yearly?

157 Q. And the other was used for pasture each year?

A. Yes, sir.

158 Q. Used by whom?

A. Mr. Wrich.

159 Q. Is he still in possession of the land?

A. Yes, sir.

160 Q. Did he farm it last year?

A. Yes, sir.

59 161 Q. And has farmed it every year since 1881?

A. Yes, sir.

The cross-examination of this witness is waived.

162. The plaintiff offers in evidence the record of a deed from the Union Pacific Railway Company to Carston Wrich covering the land in controversy, and recorded in book 27, of the deed records of Washington County, Nebraska, at pages 8, 9, 10, and 11 thereof.

Objected to as incompetent, immaterial, and irrelevant waiving however that it is the record and not the original deed; no point as to the competency of the record in place of the original deed is made by the defendant; overruled, defendant excepts.

Mr. VAN DUSEN:

163. In connection with the deed offered in evidence, I desire also to offer the record in relation to the time when the same was filed in the office of County Clerk of Washington County as found on Page 9 of said *page* previously identified.

Objected to the foregoing, as incompetent, immaterial and irrelevant, waiving however that it is the record and not the original deed; no point as to the competency of the record in place of the original deed is made by the defendant; overruled, defendant excepts.

60 With this the plaintiff rests.

164. A bunch of papers is marked exhibit A.

The defendants the Missouri Valley Land Company and the Iowa Railroad Land Company offer in evidence the record of a certain proceeding relating to the land involved in this action, had in the land office of the United States, at Neligh, Nebraska, and in the general land office of the United States at Washington, D. C., which said proceeding- are of record in the general land office of the United States at Washington, D. C., and were certified by the *County* Commissioner of the General Land Office, under date of October 31st, 1903, and which certified record is here produced and marked exhibit "A."

165. Plaintiff objects to the receipt in evidence of Exhibit A offered by Counsel for the defendant, for the reason that the said proceedings show upon their face that they were instituted before the land Commissioner's office and the Secretary of the Interior and all acts in relation to the same as shown by said record wa long after the title of the United States Government to the land in question had passed to the Union Pacific Railroad and the Sioux City & Pacific Railroad Company and that therefore neither the Commissioner of the General Land Office or the Secretary of the Interior or any other officer of the land department of the United States had any authority, right or jurisdiction to determine any question in
61 relation to the title of said land; that for the said reasons the said record is immaterial and incompetent, and has no relation to the issues in this case. And Plaintiffs specifically object- to that portion of the record which purports to be a copy of a patent issued by the United States Government relating to the land in question, and because under the pleadings in this case, the allegation is made, that a patent was issued to the Missouri Valley Land Company; that the Missouri Valley Land Company afterwards re-conveyed the title to said land to the Government of the United States and that later a patent was issued by the Government of the United States to the Missouri Valley Land Company and the Union Pacific Railroad Company, jointly, and such allegation is admitted by the answer; and also objects to the introduction of any evidence of the joint patent issued to said Companies for the reason that the same is irrelevant and immaterial under the issues in this case; and plaintiff further makes the general objection that said exhibit A is incompetent, irrelevant and immaterial and not tending to prove or controvert any issue in this case.

The COURT:

That exhibit containing this document is all under one certificate of the General Land Office?

The CLERK:

Yes.

Mr. VAN DUSEN:

166. I make no objection to the form of the certificate.

The COURT:

62 It may be received subject to objection.

With this the defendant rests.

CARSTON WRICH, re-called for the plaintiff, examined in chief by Mr. Van Dusen, testified as follows:

167 Q. Do you remember of having made an application to purchase this land from the Government of the United States?

A. I had to do that, the Union Pacific had the land.

168 Q. Do you remember of seeing Mr. Eller in this city about making the application to buy this land from the United States Government?

A. All they done, they got me to send the money to Washington, that is all.

169 Q. Do you remember the time when you sent the money to Washington?

A. I remember very near, twelve or thirteen years ago.

170 Q. Do you remember the fact that you did send it?

A. Yes, sir.

171 Q. At that time were you in possession of the land?

A. Yes, sir.

172 Q. Did you claim to be the owner?

Objected to as immaterial, incompetent and irrelevant, and because the transaction speaks for itself and is the best evidence of what the witness claims was done, sustained, plaintiff excepts.

63 The plaintiff offers to show by the witness on the stand, that at the time he did claim to be the owner of the title to the land involved in this suit.

The COURT:

You may do so. The Court Holds that you may do so, but the method of showing, that same method has been passed upon, to which ruling of the court, the plaintiff excepts and suggests and desires it to be made a matter of record that he does not understand how to conform to the Court's ruling.

173 Q. At the time you made this application and at the time when this money was paid and the application was made to purchase this land, were you in possession at that time and exercising control and ownership over the land?

Objected to as immaterial, incompetent and irrelevant, and because the transaction speaks for itself and is the best evidence of what the witness claims was done, sustained, plaintiff excepts.

174. The plaintiff offers to show by the witness on the stand that at the time he was in possession of the land exercising ownership and control over the same.

The COURT:

175. The Court holds that counsel may do so by competent testimony and by asking competent questions. To which ruling of the court the plaintiff excepts.

64 176. It is agreed between the parties that the interest of the Sioux City & Pacific Railroad Company, in the real estate involved in this action has heretofore been conveyed to the Missouri Valley Land Company, and that the said interest has heretofore been conveyed by said Missouri Valley Land Company to the defendant the Iowa Railroad Land Company, who is the successor in interest of whatever rights accrued to it under said admitted evidence, from the Sioux City & Pacific Railroad Company.

With this the testimony closed, no other or additional evidence being offered by either side.

——— ———,
Official Reporter.

64½ [Endorsed:] Ap. Doc. T. Fol. 500. Page 1454. District Court, Douglas County, Nebraska. Carston Wrich, Plaintiff *vs.* The Union Pac. Ry. Co. *et al.* Defendant. Transcript of Evidence.

65 *Warranty Deed.*

U. P. Ry. Company
to
Carsten Wrich.

Filed Nov. 15, '90, at 10 a. m. Chris Rathmann, Co. Clk.

The Union Pacific Railway Company, Union Division, Nebraska.

Deed No. 16,437.

Know all Men by These Presents: That the Union Pacific Railway Company, which is a corporation formed and existing by the consolidation of the Kansas Pacific Railway Company, the Denver Pacific Railway and Telegraph Company and the Union Pacific Railway Company, under the corporate name and style of the Union Pacific Railway Company, by authority of an act of Congress entitled an act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1, 1862, and acts amendatory thereof which said Company has succeeded to and become seized and possessed of all the real estate and property of the said constituent companies, whether real, personal or mixed and among things, of all the land granted to said Union Pacific Rail Road Company by the aforesaid acts of congress, in aid of the construction of its road, not conveyed away by said company at the date of said consolidation (to-wit: January 24th, 1880) in consideration of the sum of Twelve Hundred (1200) Dollars, to it paid, the receipt of which is hereby acknowledged, doth hereby grant, bargain, sell and convey unto Carsten Wrich of the County of Washington and State of Nebraska, the following described real estate, situate, lying and being in the

County of Washington and in the State of Nebraska, and described as follows, to-wit: The West half of the Northeast quarter (W ½ NE ¼) and the Southeast quarter of the Northeast quarter (SE ¼ NE ¼) of Section No. Twenty-one (21) in Township No. Seventeen (17), North of Range No. Eleven (11), East of the 6th Principal Meridian, containing according to the United States survey thereof One Hundred and Twenty (120) acres, more or less, being *to* same premises contracted to be sold to V. G. Lantry by contracts Nos. 46,994–6 dated March 16th, 1881. To have and to hold the said premises with all the rights and appurtenances thereunto belonging unto the said grantee, his heirs and assigns forever. And the said grantor doth hereby covenant with the said grantee that at the making of this instrument it is well seized of the said premises as of a good and indefeasible estate in fee, and hath good right to sell and convey the same, and that it will warrant and defend the title to said premises unto the said grantee, his heirs and assigns forever, against the lawful claims of all persons whomsoever. Excepting, however, all taxes and assessments levied upon said premises since March 16, 1881, and except against any claims or incumbrances created or permitted by, through or under said V. G. Lantry or his successors or assigns, or any of them. And whereas, said Union Pacific Railroad Company did on the 16th day of April, 1867, execute and deliver to Cyrus H. McCormick of the City of New York and John Duff of the City of Boston a certain mortgage deed of that date wherein said company conveyed to the said Cyrus H. McCormick and John Duff as trustees for the uses and purposes therein mentioned, among others the lands hereinbefore described. And whereas the said Cyrus H. McCormick did on the 28th day of June, 1873, by a proper instrument of writing to that effect resign his place as trustee under said mortgage deed, which resignation was on the 15th day of October, 1873, accepted by the Union Pacific Railroad Company by its Board of Directors at a meeting thereof held on that day in the City of Boston and State of Massachusetts. And whereas on the 15th day of October, 1873, Frederick L. Ames of Easton, in the State of Massachusetts, was duly nominated by the remaining trustee, John Duff, as successor to said Cyrus H. McCormick, which nomination was on the same day approved by the Board of Directors of the said Union Pacific Railroad Company and whereas, by such nomination and approval said Frederick L. Ames did upon his acceptance thereof thereafter become vested with the same estates, powers, rights and interests and charged with the same duties and responsibilities as if he had been one of the original trustees named in and executing said mortgage deed. And whereas, said remaining trustee did by a conveyance proper and effectual for that purpose dated on the 20th day of October, 1873, at the City of Boston, vest the same in such new trustee jointly with him, the said John Duff. And whereas, the said John Duff did on the 14th day of February A. D. 1877,
66 by a proper instrument of writing to that effect resign his place as trustee under said mortgage deed, which resignation was on the 14th day of February A. D. 1877, accepted by the Union Pacific Railroad Company by the executive committee of its Board of

Directors at a meeting thereof held on that day in the City of Boston and State of Massachusetts. And whereas, on the 2nd day of July, A. D. 1889, the Union Trust Company of New York was duly nominated by the remaining trustee, Frederick L. Ames as successor to said John Duff, which nomination was on the 13th day of July, 1889, approved by the executive committee of the Board of Directors of the said Union Pacific Railway Company, and the said Frederick L. Ames executed a deed on the 13th day of July, 1889, vesting in the said Union Trust Company of New York the estates, powers, rights and interests created by said mortgage deed jointly with him, the said Frederick L. Ames, And whereas the said Union Trust Company of New York signified its acceptance of said trust by signing said deed, and whereas the said Frederick L. Ames did on the 15th day of July, 1889, by a proper instrument in writing to that effect resign his place as trustee under said mortgage deed which resignation was on the 16th day of July, 1889, accepted by the Union Pacific Railway Company by the executive committee of its Board of Directors at a meeting thereof held on that day in the City of Boston and State of Massachusetts. And whereas no nomination of a successor to fill the vacancy caused by the resignation of said Frederick L. Ames having been made *to fill the vacancy caused by the resignation of said Frederick L. Ames having been made,* the said Union Trust Company of New York became and now is the sole trustee under said mortgage deed dated the 16th day of April, 1867. And whereas the said Union Pacific Railroad Company did on the 18th day of December A. D. 1873, execute and deliver to the Union Trust Company of New York a certain mortgage deed wherein said Company conveyed to the said Union Trust Company of New York as trustee for the uses and purposes therein mentioned, among others the lands hereinbefore described. And whereas the Union Pacific Railway Company with the consent of the Union Trust Company of New York, sole trustee under the mortgage deed of the 16th day of April A. D. 1867, and trustee under the mortgage deed of the 18th day of December, 1873, has sold and conveyed as above set forth the real estate hereinbefore described unto the said grantee for and in consideration of the sum aforesaid to the Union Pacific Railway Company in hand paid by said grantee which said sum of money has been paid to the said Union Trust Company of New York in its capacity as trustee for the uses and purposes mentioned in said mortgage deeds of the 16th day of April, 1867, and the 18th day of December, 1873. Now therefore know all men by these presents, That the said Union Trust Company of New York, trustee in the aforesaid mortgage deeds, in consideration of the aforesaid premises and the payment as aforesaid of said sum so paid by said Railway Company to said Trust Company for the uses and purposes aforesaid, does hereby remise, release, and forever quit-claim unto the said Carsten Wrich the real estate described aforesaid, to be held by the said grantee free and exempt from all liens, incumbrances and charges of said mortgage deeds of the 16th day of April, 1867, and of the 18th day of December, 1873, but subject, however, to all the reservations and conditions hereinbefore contained.

In witness whereof, the said grantor, The Union Pacific Railway Company, hath caused these presents to be sealed with its corporate seal and to — signed by its President, attested by its Secretary and countersigned by its Land Commissioner and its Auditor, and the said Union Trust Company of New York, trustee under the mortgage deeds of the 16th day of April, 1867, and of the 18th day of December, 1873, hath caused these presents to be sealed with its corporate seal and to be signed by its Vice-President, who is thereto duly authorized and empowered by the by-laws of the Company and by resolution of its Board of Directors, this 12th day of March, A. D. 1890.

[CORPORATE SEAL.]

THE UNION PACIFIC RAILWAY COMPANY,
By C. F. ADAMS, *President.*

Countersigned:
B. McALLASTER, *Land Commissioner.*
ERASTUS YOUNG, *Auditor.*

In presence of
WM. I. ARNOLD.
W. H. SPARSHOTT.

Attest: ALEX MILLAR, *Secretary.*

[CORPORATE SEAL.]

UNION TRUST COMPANY OF NEW YORK, *Trustee,*
By JAS. H. OGILVIE, *Vice President.*

In presence of
J. A. SHAUGHNESSY.
A. V. C. WEBB.

67 STATE OF MASSACHUSETTS, *County of Suffolk, ss:*

Be it remembered that on this 25th day of August A. D. 1890, before me a Notary Public in and for said County, appeared the Union Pacific Railway Company by C. F. Adams, its President, who is personally known to me to be the identical person whose name is subscribed to the foregoing instrument as said President and then and there acknowledged the execution and sealing of said instrument to be his voluntary act and deed and the voluntary act and deed of said Company. In witness whereof, I have hereunto set my hand and official seal this 25th day of August A. D. 1890, at the City of Boston in said County and State.

[SEAL.] FRANK D. BUTRICK,
Notary Public.

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that on this 21st day of October, A. D. 1890, before me a Notary Public in and for said County, appeared the Union Trust Company of New York, by James H. Ogilvie, its Vice-

President, who is personally known to me to be the identical person whose name is subscribed to the foregoing instrument as said Vice-President and then and there acknowledged the execution and sealing of said instrument to be his voluntary act and deed and the voluntary act and deed of said Company. In witness whereof, I have hereunto set my hand and official seal this 21st day of October A. D. 1890 at the City of New York in said County and State.

[SEAL.] FRED G. RICHARDS,
Notary Public, N. Y. Co.

I, Geo. H. Faber, County Clerk within and for Washington County and State of Nebraska, do hereby certify that the foregoing is a true and correct copy of the Warranty Deed from the Union Pacific Railway Company to Carsten Wrich now of record in this office and recorded in Book 27 at Page- 8-9-10-11. Witness my hand and the seal of this office this 10th day of December, A. D. 1904.

[Seal of Washington County, Nebraska.]

GEO. H. FABER,
County Clerk.

67½ [Endorsed:] Copy of Warranty Deed. The Union Pacific Railway Co., to Carsten Wrich. Filed Nov. 15, 1890, at 10:00 o'clock a. m.

68 M. L. 144,007. S. S. M.

Ex. "A."

4–207*a*

F. S. S. M. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Oct'r 31st*, 1903.

I, J. H. Fimple, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies of papers, all relating to the Cash Entry No. 6032 made by Carston Wrich and covering the N.W. ¼ N.E. ¼, Section 21, Township 17 North Range 11 East of the 6th Principal Meridian, Neligh land district, Nebraska, are true and literal exemplifications of the originals on file or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the Seal of this Office to be affixed, at the City of Washington, on the day and year above written.

[Seal United States General Land Office.]

J. H. FIMPLE,
Acting Commissioner of General Land Office.

69 Ex'd: C. M. B., M. M. C.

(4–189.)

No. 6032.

LAND OFFICE AT NELIGH, NEB., *September* 25, 1893.

It is hereby certified that, in pursuance of law, Carsten Wrich, residing at Kennard, in Washington County, State of Nebraska, on this day purchased of the Register of this Office under Sec. 5 act March 3, 1887, the N. W. ¼ N. E. ¼ of Section No. 21, in Township No. 17 N. of Range No. 11 E. of the 6 Principal Meridian, Nebraska, containing 40 acres, at the rate of 1 dollar and 25 cents per acre, amounting to fifty dollars and — cents, for which the said Carsten Wrich has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said
70 Carsten Wrich shall be entitled to receive a Patent for the lot above described.

F. W. BOGGS, *Register.*

[Written across the face:] Canceled in accordance with Sec't'y's decision of April 28, 1896. See — to R. & R. Aug't 25/96, Doc. 11–10370.

[Written across the face:] No patent to issue hereon.

F. C. L.,
Div. "F."

[Written across the face:] Canceled.

[Endorsed:] No conflict. Nov. 2/93.† (4–189.) No. 6032. Cash entry. Land office at Neligh Neb. Sec. 21, Town 17 N., Range 11 E. Sec. 5, act Mar. 3, 1887. Referred to Div. F. 1893. Aug't 25/96. To R. & R. Entry canceled. "F." Papers to Div. "C." F. C. L. Div. C. List No. 52. Canceled and purchase money ordered to be refunded Dec. 17/97. J. L. 5–242. N. E.—Omaha Ser.

71 Ex'd: C. M. B., M. M. C.

(4–131.)

No. 6032.

RECEIVER'S OFFICE AT NELIGH, NEB., *September* 25, 1893.

Received from Carsten Wrich of Washington County, Nebraska, the sum of Fifty dollars and — cents; being in full for the N. W. ¼ of N. E. ¼ *quarter* of section No. 21, in Township No. 17 N. of Range No. 11 E. of the 6 P. M. containing 40 acres — hundredths, at $1.25 per acre.

$50.00.

H. E. KRYGER, *Receiver.*

[† In pencil in copy.]

[Written across the face:] Canceled in accordance with Sec't'y's decision of April 28/96. Doc. 11-10370. See to R. & R. Aug't 25/96.

F. C. L.,
Div. "F."

[Written across the face:] Canceled and purchase Money ordered to be Refunded Dec. 17/97.

J. L.

Rec'd for examination of testimony 1600 words at 15c. per 100 $2.40.

72 Ex'd: C. M. B., M. M. C.

Certificate of Publication.

THE STATE OF NEBRASKA, *Washington County, ss:*

Isaac Thompson being first duly sworn, deposes and says that he is for-man of The Pilot, a Weekly Newspaper published at Blair, Washington County and State of Nebraska, and of general circulation in said County; that the notice, a copy of which is hereto annexed, was published in said Newspaper six consecutive weeks, commencing on the 17th day of August A. D. 1893.

ISAAC THOMPSON.

Subscribed and sworn to before me, this 23d day of September A. D. 1893.

[SEAL.] E. H. CLARK,
Notary Public.

Printers' Fee	$5.00
Certificate	.25
Total	$5.25

73 *Notice of Publication.*

LAND OFFICE AT NELIGH, NEB., *August* 10, 1893.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that said proof will be made before the Clerk of the District court at Blair, Neb., on Sept. 23, 1893, viz: Carsten Wrich, for the N.W. ¼ N.E. ¼ Sec. 21 Twp. 17 R. 11 E.

He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: John Japp, of Blair, Nebr., Henry Schumacher, of Kennard, Nebr., Joseph Harder, of Kennard, Neb., Hans Thede, of Bennington, Neb.

F. W. BOGGS, *Register.*

6—102

74 (4–227.)

Certificate as to Posting of Notice.

LAND OFFICE AT NELIGH, NEB., *September* 25, 1893.

I, F. W. Boggs, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 10 day of August, 1893.

F. W. BOGGS, *Register.*

75 (4–349.)

No. 2.—Pre-emption.

LAND OFFICE AT NELIGH, NEB., —— —, 18–.

application under Act March 3, 1887,

I, Carsten Wrich, of Kennard, Washington Co., Nebr., who made A [Pre-emption Declaratory Statement No.]* — for the N. W. ¼ N. E. ¼ Sec. 21, T. 17, R. 11 East, Nebr., do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before the clerk Dist. Court at Blair Nebr., on Sept. 23, 1893, by two of the following witnesses:

John Japp, of Blair Nebr., Henry Schumachger, of Kennard Nebr., Joseph Harder, of Kennard Nebr., Hans Thede, of Bennington Nebr.

CARSTEN WRICH.

(Signature of claimant.)

75½ LAND OFFICE AT NELIGH, NEB., *August* 10, 1893.

Notice of the above application will be published in the Pilot, printed at Blair Nebr., which I hereby designate as the newspaper published nearest the land described in said application.

F. W. BOGGS, *Register.*

NOTICE TO CLAIMANT.—Give time and place of proving up and name and title of the officer before whom proof is to be made; also give names and post-office address of four neighbors, two of whom must appear as your witnesses.

Ed. collect.

[* Words enclosed in brackets erased in copy.]

76 Ex'd: C. M. B., M. M. C.

(4–131.)

No. 10533.

RECEIVER'S OFFICE AT O'NEILL, NEB., *Sept.* 6, 1894.

Received from Carsten Wrich of Kennard [County,]* Nebraska, the sum of Fifty dollars and — cents; being *in full* for the N. W. ¼ N. E. ¼ *quarter* of Section No. 21, in Township No. 17, of Range No. 11 E. containing 40 acres and — hundredths, at $2.50 per acre. Balance due $50.

E. WILLIAMS, *Receiver.*

Canceled and purchase Money ordered to be refunded Dec. 17/97.
J. L.

[Written across the face:] Canceled in accordance with Sec't'y's decision of April 28/96. Doc. 11–10370. See "F" to R. & R. Aug't 25/96.

F. C. L.
"F."

[Written across the face:] In accordance with Com'r letter "F" of Aug. 25, 1894.

[Endorsed:] No. 10533. G. 5–242.

77 *Final Proof under Application No. —, of Carsten Wrich.*

To Purchase the N.W. ¼ N.E. ¼ Section 21, Township 17, North of Range 11 East, Washington County, Nebraska.

Under Act Approved March 3rd, 1887.

78 In the District Court of Washington County, Nebraska.

Be it Remembered, That heretofore to-wit on the 9th day of September 1890, before the Honorable Joseph R. Clarkson, one of the Judges of said Court, and other Court officers being present, there was had and does among other things the following, to-wit:—

In the Matter of the Citizenship of CARSTEN WRICH.

This day came Carsten Wrich, a native of Germany, who declared his intention of becoming a citizen of the United States according to law before the Clerk of this Court, at least two years prior to this date, and having proved good character and residence in the United States for more than five years and in this State at least one year

* [Erased in copy.]

last past by the oaths of Christ Rathmann and Claus Mencke took the oath of renunciation and allegiance required by law and was admitted to citizenship.

(Signed) JOSEPH R. CLARKSON, *Judge.*

STATE OF NEBRASKA, *Washington County, ss:*

I, Carl Schmachtenberg, Clerk of the District Court, within and for Washington County, Nebraska, do hereby certify that the above and foregoing is a true and correct copy of the Journal entry, recorded in Journal "H" of the District Court record of said County at page "318" admitting Carsten Wrich to final citizenship.

Witness my hand and the seal of our said Court at Blair, Nebraska, this 23rd day of September, 1893.

[SEAL.] C. SCHMACHTENBERG,
Clerk of District Court, in and for Washington County, Nebraska.

CARSTEN WRICH, being called as a witness in his own behalf in support of his application #— to purchase the north west one-fourth of the north east one-fourth of section 21, township 17 north range 11 east in Washington County, Nebraska, containing 40 acres, under the fifth section of the Act of Congress approved March 3rd, 1887, (24th Stat. 556) testifies as follows:

Q. What is your name, age, and post-office address?

A. Carsten Wrich, 63, P. O. Kennard, Nebraska.

Q. Is the lands you apply to purchase or enter of the numbered section prescribed by the grant of the Government to the Union Pacific Railroad Company and the Sioux City & Pacific Railroad Company, or either of them?

A. It is.

Q. Is it co-terminous with the constructed parts of said railroads or either of them?

A. Yes.

Q. Was this land sold by said railroad Companies or either one of them to you or to someone under whom you claim as a part of its grant? And if so, which one?

A. It was sold to me by the Union Pacific Railroad Company as a part of its grant.

Q. Was this land excepted from the operation of the grants to said Railroad Company or either of them?

A. Yes, Both.

Q. At the date of said sale to you was the lands you now apply to purchase, in the *bona fide* occupancy of adverse claimants under the pre-emption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned?

A. No sir.

Q. Has the land been settled upon subsequent to the 1st day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws of the United States?

A. No sir.

Q. Are you a native born citizen of the United States?
A. No.
Q. Have you declared your intention of becoming a citizen of the United States according to law?
A. Yes, I am a fully natural- citizen of United States.

84 Q. Are you a *bona fide* purchaser of this land from the Union Pacific Railroad Company, or Sioux City & Pacific Railroad Company, or did the person under whom you claim title thereto purchase it from said Companies or either of them?

A. Yes, I bought it direct from the Union Pacific Railway Company.
Q. When did you buy this land from the Union Pacific Railroad Company and what price did you pay for it?
A. March 16, 1881, I paid $10 per acre for it.
Q. Here you occupied the land and cultivated the same ever since you bought it.
A. I have.

(Signed) CARSTEN WRICH.

84½ I hereby certify that the foregoing testimony was read to the claimant by me before being subscribed, and was sworn to before me this 23rd day of September, 1893.

[SEAL.] C. SCHMACHTENBERG,
Clerk District Court in and for Washington County, Nebr.

85 *Testimony of Witness.*

JOHN JAPP, being called as a witness in support of the application # — of Carsten Wrich, to purchase the North West Qr. of the North East Qr. of section 21 township 17, range 11 east in Washington County, Nebraska, containing 40 acres; under the fifth section of the Act of Congress approved March 3rd, 1887, testifies as follows:—

Q. What is your name, age, and post office address?
A. John Japp, 57, Blair, Nebraska.
Q. Are you well acquainted with the applicant in this case, and the land embraced in his application? If so, how long have you known it?
A. I am, have known the land 26 years.

86 Q. Is the tract of the numbered section prescribed by the grant of the Government to the Union Pacific Railroad Company and Sioux City & Pacific Railroad Company, or either of them?

A. It is.
Q. Is it co-terminous with the constructive part of said roads or either of them?
A. Yes, with both.
Q. Was this land sold by said companies or either of them to the applicant or one under whom he claims, as a part of its grant?
A. Yes.
Q. Was the land excepted from the operation of the grants?
A. Yes, sir.

Q. At the date of said sale was this land in the *bona fide*
87 occupancy of adverse claimants under the pre-emption or homestead laws, whose claims and occupancy has not since been voluntarily abandoned?

A. No.

Q. Has this land been settled upon subsequent to the 1st day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws of the United States.

A. No, sir.

Q. Is the applicant a citizen of the United States or has he declared his intention to become a citizen?

A. He is a full naturalized citizen of United States.

Q. Was the applicant or the one under whom he claims a
88 *bona fide* purchaser of this land from the Union Pacific Railroad Company or Sioux City & Pacific Railroad Company? If so from which Company did he purchase?

A. Yes. It was purchased from the Union Pacific Railroad Company.

Q. When did he make the purchase and what did he pay for it, if you know?

A. He made the purchase Mar. 16, 1881, and paid $10 an acre.

Q. Has applicant or the one under whom he claims been in the actual and peaceable possession of said lands at all times since the date of the said purchase?

A. Yes.

Q. Is the land cultivated and improved? If so, who put
89 on the improvements and cultivated the same?

A. Yes, it is Carsten Wrich.

Q. How far do you live from this land, and how frequently have you seen the same since the date of applicant's purchase from said Company?

A. About two miles and have seen it as often as twice a month ever since he bought it.

Q. You may state any other facts known to you concerning the occupancy, possession and cultivation of this land.

A. Since the date of the purchase nobody ever cultivated or occupied it, but Carsten Wrich.

(Signed) JOHN JAPP.

I hereby certify that the foregoing testimony was by me
90 read to the witness before being subscribed and was sworn to before me this 23rd day of September, 1893.

C. SCHMACHTENBERG,

[SEAL.] *Clerk District Court in and for Washington County, Nebraska*

91 *Testimony of Witness.*

HANS THEDE, being called as a witness in support of the application to purchase of Carsten Wrich for the N.W.¼ of N.E.¼ section 21, township 17 north of range 11 east in Washington County, Nebraska, containing 40 acres, under the fifth section of the Act of Congress of March 3rd, 1887, testifies as follows:

Q. What is your name, age and post office address?

A. Hans Thede, age 33, P. O. Bennington, Nebraska.

Q. Are you well acquainted with the applicant in this case and the land embraced in his application?

A. Yes.

92 Q. Is the tract of the numbered sections prescribed by the grant of the Government to the Union Pacific Railroad Company or the Sioux City & Pacific Railroad Company or either?

A. It is.

Q. Is it co-terminous with the constructed parts of said roads or either of them?

A. Yes. With both.

Q. Was this land sold by said Company or either of them to the applicant or one under whom he claims as a part of its grant?

A. Yes.

Q. Was this land excepted from the operation of the grant?

A. Yes sir.

93 Q. At the date of said sale was this land in the *bona fide* occupancy of adverse claimants under the pre-emption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned?

A. No.

Q. Has this land been settled upon subsequent to the 1st day of December, 1882, by any person or persons, claiming the right to enter the same under the settlement laws of the United States?

A. No sir.

Q. Is the applicant a citizen of the United States, or has he declared his intention to become such?

A. He is a naturalized citizen of the United States.

94 Q. Was the applicant or one under whom he claims a *bona fide* purchased of this land from the Union Pacific Railroad Company or the Sioux City & Pacific Railroad Company, and if so from which did he purchase?

A. Yes. From the Union Pacific Railroad Company.

Q. When did he make the purchase and what did he pay for it, if you know?

A. About 10 or 12 years ago. $10 per acre.

Q. Has the applicant or one under whom he claims been in the actual and peaceble possession of said lands at all times since the date of the said purchase?

A. Yes.

Q. Is the land cultivated and improved, if so, who put on the improvements and cultivated the same.

A. Yes. Improvements were made by applicant.

95 Q. How far do you live from the land, and how frequently have you seen the same since the date of the said purchase from the said Railroad Company?

A. 300 feet; within ¼ mile of it. Most every day.

Q. State any other facts known to you concerning the occupancy, possession and cultivation of this land.

Answer to last question.

I have lived, where I do now for ten years and no one has occupied or cultivated the land, but Carsten Wrich, since I knew it.

(Signed) HANS THEDE.

I hereby certify that the foregoing testimony was by me read to the witness before being subscribed and was sworn to before

96 me this 23rd day of September, 1893.

[Seal for Washington *Court*, Nebraska.]

C. SCHMACHTENBERG,
Clerk of District Court in and for
Washington County, Nebraska.

97 *Final Affidavit.*

LAND OFFICE AT NELIGH,
NEBRASKA, ——, 1893.

STATE OF NEBRASKA, *Washington County, ss:*

I, Carsten Wrich, of Kennard post office, Washington County, Nebraska, applying to purchase the N.W.¼ of N.E.¼ section 21, township 17 Range 11 east, in Washington County, Nebraska, under the fifth section of the Act of Congress, approved March 3rd, 1887, (24th Stat. 556) do solemnly swear that since August 30th, 1890, I have not entered under the land laws of the United States, or filed upon a quantity of land, which with the tract now applied for would make more than 320 acres of land: My settlement was commenced upon the lands applied for by myself or the one under whom I

98 claim March 16th, 1881, and my improvements consist of fence on three sides, with posts and wire; it has all been plowed and cultivated by me.

CARSTEN WRICH.

Subscribed in my presence and sworn to before me this 23rd day of September, 1893.

C. SCHMACHTENBERG,
[SEAL.] *Clerk of the District Court in and for*
Washington County, Nebraska.

[Endorsed:] Cash Entry No. 6032 Land Office at Neligh, Nebraska Approved: F. W. Boggs Register H. E. Kryger, Receiver.

99 Ex'd: C. M. B., M. M. C.

Abstract of Title to the North West Quarter (N.W.^{1}) of the North East Quarter (N.E.^{1}) of Section 21 Township 17 North, Range 11 of 6th P. M. County of Washington, State of Nebraska.

Grantor
Union Pacific Railway Co.

Grantee
Carsten Wrich

Description
Part of Section
N.W.^{1} of N.E.^{1}

Sec.	T'w'p.	Range.	Acres.
21	17	11	40

Kind of Instrument
W. D.

Date

Month.	Day.	Year.
M'ch ...	12	1890

100 When Filed

Month.	Day.	Year.
Nov....	15	1890

Consideration

Dollars.	Cts.
1200	

Record

Book.	Page.
27	8

Before Whom and Where Acknowledged Frank D. Butrick N. P. Suffolk Co. Mass. Fred G. Richards N. P. New York City.

Seal.	Witness.
Yes	Two
Yes	Two

Remarks.

As to the sig'n of Pres'd & Auditor (Corp Seal) of U. P. Ry. Co. As to the sig'n of Vice Pres'd & Trustee (Corp Seal) of Union Trust Co. of New York.

101 *Certificate of Abstracters.*

We, the undersigned, certify that we have carefully examined the title to the lands described in the within abstract, and that it is a full and correct abstract of all conveyances upon record affecting the within described land, the North West Quarter of the North

East Quarter (N.W.^{4} N.E.^{4}) of section 21, Tp. 17, Rg. 11 E. 6 P. M. that we have examined the records of all the conveyances therein named, and they are properly executed and properly indexed. And we further certify that there are no mechanic's liens on file in the office of the County Clerk of Washington County, Nebraska, against any of the within named parties, or against the lands described within.

102 Witness our hands this 2d day of May 1891.

CHRIS. RATHMANN, *Abstracter.*

[Endorsed:] Exhibit "A." Department of the Interior, L. & R. Div. Received Sept. 29, 1892. 8971. To —— ——. Abstract of Title to N.W^{4} N.E.^{4}, Section 21, Township 17, Range 11, County of Washington, State of Nebraska. Compiled by Chris. Rathmann, Abstracter, Blair, Nebraska. 109 158899–2.

103 Ex'd: C. M. B., M. M. C.

F.

S. S. Burdett. J. B. Thompson. Frank A. Law. C. W. Curtis.

Burdett, Thompson & Law, Attorneys and Counsellors at Law, Offices 925 F St. P. O. Box 24.

40128.

WASHINGTON, D. C., *October 17th*, 1894.

Hon. S. W. Lamoreux, Commissioner of the General Land Office.

SIR: As attorneys for the Sioux City and Pacific Railroad Company, we hereby protest against the issue of patent to Ca-sten Wrich under his cash entry #6032 under the act of March 3, 1887, for the N. E. ¼ of N. E. ¼ of Sec. 21, Town 17, Range 11 E., Nebraska, which entry was made September 25, 1893.

104 The grounds of this protest are as follows:

The tract in question lies within the grant limits of the said railroad company, under its grant of 1864. At the date of the grant and at the date of the definite location thereunder the land was free from any claim which would except it out of the grant. True there was of record an indemnity school selection which was afterward canceled,—but this selection was void, and the Honorable Secretary of the Interior in the late case of Union Pacific Railway Co. *v.* United States, 17 L. D. 43, held that a similar school indemnity selection (syallabus) does not reserve the land so

105 selected from the operation of a railroad grant on definite location of the road.

Applying this decision to the facts in the present case, the conclusion is inevitable that the said school indemnity selection did not except the tract in question from the railroad grant.

It follows, therefore, that the tract passed under the grant to the said railway company. It is only lands *not granted* which may be purchased under the 5th section of the act of March 3, 1887,—

granted lands are by express enactment excepted out of the right of purchase. It is submitted, therefore, that there was no authority of law for the purchase by Wrich and hence that his entry should be canceled.

Second. The proofs in the case show no purchase of this
106 land by Wrich from the Sioux City & Pacific R. R. Co., within the limits of whose grant it falls. As a matter of fact he never did purchase any of the land from the said Company. We are so informed by the Company. Even were the land excepted out of the grant by the aforesaid school selection Wrich could not properly establish his right to buy under the act of 1887, without exhibiting some evidence that the land had been sold to him by said Company as a part of its grant. Having failed to do this his entry was improperly allowed and should be rejected.

Third. The abstract of title accompanying the proofs in
107 the case shows that the purchase upon which Wrich relies was made from the Union Pacific Railroad Company, and that its deed was given to him conveying the land on March 12, 1890. This was subsequent to the passage of the act of March 3, 1887. That act allows purchases from the United States only where the claimant of his grantor bought of the railroad company prior to its date. It is possible that Wrich may have bought of the said Company prior to March 3, 1887, under a contract for the title, and that such contract was not placed on record, thus accounting for the omission of a reference to it in the abstract of title. We know nothing as to the facts in that regard, but the mere
108 statement of Wrich that he bought of the railroad company in 1881 is not, we submit, such evidence of purchase prior to the act of 1887 as is contemplated by said act, for his statement is not corroborated by the abstract of title, nor by any other competent evidence in the record.

For these reasons we respectfully ask that the entry of Wrich may be canceled and the land awarded to the Sioux City and Pacific Railroad Company, and, further, that we may be advised of all action.

Very respectfully, BURDETT, THOMPSON & LAW.

[Endorsed:] U. S. General Land Office. Received Oct. 19, 1894. 109,435. "B." Department of the Interior. Received ——. Number 22–680½. Burdett, Thompson & Law. City. Oct. 17, 1894. As attorneys for Sioux City and Pac. R. R. Co., protest against issue of patent to Casten Wrich, C. E. 6032, &c., Nebraska. File with Cash entry # 6032, Neligh, Nebr. Oct. 20, '94. J. S. J. 11-10370. F. $\frac{34}{349}$.

109 Ex'd: M. M. C. C. M. B.

1894—109,435. C. E. 6032.

S. S. M.
W. O. C.
J. McC.

J. S. J.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Mar.* 4, 1895.

Register and Receiver, O'Neill, Nebraska.

SIRS: On September 25, 1893, Carsten Wrich made cash entry No. 6032, for the N. W. ¼ N. E. ¼, Sec. 21 T. 17 N., R. 11 E., under section 5 of the act of March 3, 1887 (24 Stat., 556).

The land is within the limits of the grants to the Union Pacific and Sioux City and Pacific Railroad Companies, authorized by the acts of July 1, 1862 (12 Stat., 489) and July 2, 1864 (13 Stat., 356).

On June 12, 1881, the Union Pacific Railroad Company listed the land in question per list No. 4, but the Sioux City and Pacific
109½ Railroad Company has never listed the same.

On November 24, 1891, the listing by the former company as to the above described tract of land was held for cancellation and the claim of the latter company was held for rejection, subject to the usual right of appeal to the Honorable Secretary of the Interior, and on May 19, 1892, said companies having failed to appeal, the listing of the former was finally canceled and the claim of the latter finally rejected as to this land.

On August 10, 1893, the entryman caused to be published notice of his intention to make final proof in support of his claim, and on the day named, September 23, 1893, he was present with his
110 witnesses and submitted his proof, which shows that he purchased the land from the Union Pacific Railroad Company in 1881, and has occupied and cultivated the same ever since.

The land was unoccupied at the time of the sale by the railroad company, and has not been settled upon by any one claiming the right to enter the same under the public land laws since Dec. 1, 1882.

The entryman has declared his intention to become a citizen of the United States, and he bought the land in good faith.

No one appeared to interpose objections to his proof, or offer counter proofs.

On October 17, 1894, the Sioux City and Pacific Railroad Company, through its attorneys Messrs. Burdett, Thompson and
111 Law, of this city filed a protest against the issuance of patent to Carsten Wrich for this land under his said cash entry No. 6032, based upon the ground that, at the date of the grant, and the date of the definite location of the road, the land was free from any claim which would except the same from the operation of the grant.

Without noting the other points raised by said protest, I deem it only necessary to add that the claim of the Sioux City and Pacific Railroad Company was, on May 19, 1892, finally rejected,

after due notice of the decision of this office of November 24, 1891, holding such claim for rejection.

Accordingly said protest is hereby dismissed. You will
112 advise the entryman of this action.

Messrs. Burdett, Thompson & Law, the resident attorneys for said railroad company, have been advised hereof by this office.

Very respectfully, S. W. LAMOREUX,
Commissioner.

113 Ex'd: C. M. B. M. M. C.

F. L. C. W. F. M.
V. B. W. F. M.
4442–'95. R. W. H.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *October* 18, 1895.

Certiorari.

SIOUX CITY & PACIFIC R. R. CO.
v.
CARSTEN WRICH.

The Commissioner of the General Land Office.

SIR: The land involved in this case is the N. W. ¼ of the N. E. ¼ of Section 21, Township 17 N, Range 11 E., in the land district of Neligh, Nebraska, and lies within the limits of the grants of 1862 in aid of the Union Pacific Railway and the Sioux City and Pacific Railroad Companies.

By letter of November 24, 1891, your office, in passing upon the status of this land, held that it was excepted from the operation of the grants by virtue of a State indemnity school selection of
114 date July 1, 1858, which selection, though invalid, had remained of record until July 3, 1880, when it was canceled by your office. By the same letter a selection of the Union Pacific Railway Company of the land in question was canceled, and the claim of the Sioux City and Pacific Railroad Company was denied. There was no appeal by either company from this decision.

Meanwhile, on September 25, 1893, Carsten Wrich was allowed to make cash entry of the land, and on October 17, 1894, Burdette, Thompson and Law, of this city, counsel of the Sioux City and Pacific Railroad Company, filed in your office a protest against
115 the issuance of patent to Wrich, setting out various grounds of objection thereto. This protest was dismissed, and the company, though intending to appeal, failed, through inadvertence, to file the same before the expiration of the time allowed therefor.

When the appeal was presented to your office it was rejected, for the reason that it was sought to be filed out of time.

The company has now presented to this Department a duly verified petition for certiorari, wherein all the foregoing facts are set out,

the same being accompanied by copies of the decisions rendered by your office and of which complaint is made.

This Department is asked to interfere at this stage of the
116 proceedings on the ground that your office erred in holding that the invalid school selection of the State of Nebraska operated to except the land from the grants, "and, that inasmuch as this action can not in any manner affect the real title to the land, and since only a question of law is involved, it is the plain duty of this Department under its supervisory authority to correct an error, which the courts when appealed to would certainly rectify."

Since the decision of your office complained of, this Department has held, in the case of the Union Pacific Railway Company *v.* United States (17 L. D., 43), that a school indemnity selec-
117 tion, made prior to statutory authority therefor, does not reserve the land so selected from the operation of a railroad grant on definite location of the road, and in that case the earlier one of Fitch *v.* Sioux City and Pacific Railroad Company was in express terms overruled as to that point.

It appears, therefore, from the *ex parte* showing presented, that the petitioner is entitled to the relief prayed for, and the record will be duly certified to this Department accordingly.

The papers transmitted by your office letter "F" of June 7, 1895, are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

118 Ex'd: C. M. B., H. D. L.

Schedule verified and the entire record originally submitted by the Commissioner of the General Land Office is returned herewith.

May 2/96.—J. T. S.

119 F. W. C.
F. W. C.
F. L. C. G. B. G.
22–680½. R. W. H.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *April* 28, 1896.

SIOUX CITY AND PACIFIC R. R. CO.
v.
CARSTEN WRICH.

The Commissioner of the General Land Office.

SIR: I have considered the appeal by the Sioux City and Pacific railroad company, from your office decision of March 4, 1895, dismissing its protest against the issue of patent upon the cash entry of Carsten Wrich, made September 25, 1893, under the provisions of section 5, of the act of March 3, 1887 (24 Stat., 556), covering the N.W. ¼ N.E. ¼, Sec. 21, T. 17 N., R. 11 E., Neligh land district, Nebraska.

This land is within the common limits of the grants made to aid in the construction of the Union Pacific and Sioux City and Pacific railroads.

At the dates of the attachment of rights under said grants the land in question was, so far as the record before me shows, free from adverse claim otherwise than the school indemnity selection made July 1, 1858, which selection was canceled July 3, 1880, there having been no statutory authority for the making of said selection
120 prior to February 26, 1859.

This tract had been listed by the Union Pacific railway company, and by your office decision of November 24, 1891, said listing was held for cancellation and the claim of the Sioux City and Pacific railroad company was rejected.

Neither company appealed, and on May 19, 1892, the listing by the Union Pacific was canceled.

On September 25, 1893, Wrich, having purchased this tract of the Union Pacific railway company, was permitted to make cash entry of the land under the provisions of section 5 of the act of March 3, 1887, *supra*.

The Sioux City and Pacific railroad company protested against the issue of patent upon said entry, urging that the land was not subject thereto but had passed under the grants to the Union Pacific and Sioux City and Pacific railroads.

This protest was overruled in your office decision of March 4, 1895, from which the company presented an appeal, but the same was refused because filed out of time.

A petition of *certiorari* was then filed, which was considered in departmental decision of October 18, 1895 (not reported) and granted and the record ordered to be certified to this Department.

In accordance with said order the record is now before me.

The showing made by the company in support of its petition is fully sustained by the record, and in view of the decision in the case of Union Pacific Ry. Co. *v.* U. S. (17 L. D., 43), wherein it was held that (syllabus)—

121 A school indemnity selection, made prior to statutory authority therefor, does not reserve the land so selected from the operation of a railroad grant on definite location of the road,

it is apparent that your office erred in holding the tract in question to have been excepted from these grants.

In the case of Knight *v.* United States (142 U. S., 181), it was held that—

It makes no difference whether the appeal is in regular form according to the established rules of the Department, or whether the Secretary on his own motion, knowing that injustice is about to be done by some action of the Commissioner, takes up the case and disposes of it in accordance with law and justice. The Secretary is the guardian of the people of the United States over the public lands. The obligations of his oath of office oblige him to see that the law is carried out, and that none of the public domain is wasted or is disposed of to a party not entitled to it.

While it is true that the companies failed to appeal from your office decision adverse to their claimed rights under their grants, yet as the land is still within the jurisdiction of this Department I am of the opinion that as the matter has been brought to my attention, the regularity of the proceeding is not material, and as I am charged under the laws with the adjustment of these grants, that I am bound to withhold from other disposition lands falling within the terms of the grants.

I have therefore to direct that Wrich's entry be cancel-ed, unless, after due notice other and sufficient reason is given for holding this land to be excepted from these grants than the fact that it was covered by the indemnity State selection.

Your office decision is therefore reversed. Herewith are returned the papers in the case.

Very respectfully, HOKE SMITH, *Secretary.*

[Endorsed:] 1896–49004.

122 Ex'd: M. M. C., C. M. B.

1896–49004.
11–10370. W. J. M.

J. S. J.

Refer in reply to this initial:

"F." DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 9, 1896.

S. C. AND PAC. R. R. CO.
vs.
CARSTEN WRICH.

Involving the NW¼ of the NE¼, Sec. 21, T. 17 N., R. 11 E.

Register and Receiver, O'Neill, Nebr.

GENTLEMEN: In reference to the above-entitled case, I enclose herewith a copy of departmental decision of April 28, '96, reversing the decision of this office, dated Mar. 4, 1896.

Notify all parties in interest of said departmental decision, and if, at the expiration of the time allowed for filing motion for review (see Rules 76, 77, and 78 of Practice, Circular, 5 L. D., 204), no such motion has been filed in your office and you have not been
123 informed that such motion has been filed here, you will promptly report the fact for final action, transmitting therewith evidence of service of notice of decision of the department.

Resident counsel for the company has been notified hereof by mail on this date.

Respectfully, S. M. LAMOREUX,
Commissioner.

124 Ex'd: M. M. C., C. M. B.

11–10370. W. J. M.

Refer in reply to this initial.

F. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Aug't* 25, 1896.

S. C. & P. R. R. Co.
vs.
CARSTEN WRICH.

Involving the NW¼ NE¼, Sec. 21, T. 17 N., R. 11 E.

Register and Receiver, O'Neill, Nebr.

GENTLEMEN: In reference to the above-entitled case, you are advised that I am in receipt of your letter of July 21, 1896, reporting that no motion for review of departmental decision, dated April 28, 1896, has been filed after due service of notice, evidence of which is furnished.

Said decision has, therefore, become final, and the case is
125 hereby closed.

Cash entry No. 6032, by Carsten Wrich, for the above described tract has this day been canceled and you will so note on your records. The attorneys for the company have been advised by this office.

Respectfully, E. F. BEST,
Acting Commissioner.

126 4–446.

Ex'd. M. M. C. C. M. B.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1862, as amended by the Act of July 2, 1864, "to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for Postal, Military and other purposes," authority is given the Sioux City and Pacific Railroad Company, a corporation organized under the laws of the State of Iowa, said Company having been designated by the President, under the provisions of the Act of 1864 (*Supra*) for the purpose, to construct a railroad and telegraph line, under the conditions and stipulations expressed in said acts, and provision is made granting to said company "alternate sections of land within ten miles in width on each side of the same along the whole length of said branch," and

Whereas, it is shown by evidence on file in the General Land Office that Commissioners appointed by the President under the provisions of the aforesaid acts, have reported to the Secretary of the Interior that said road has been completed and equipped in the

manner prescribed thereby from the initial point at Sioux City, Iowa, to the point of intersection with the Union Pacific Railroad at Fremont, Nebraska, and that the same has been accepted by the President, and

Whereas, it is also shown by evidence on file in the General Land Office, that the Missouri Valley Land Company, a corporation organized under the laws of the States of Iowa and Nebraska,
127 became by purchase, the successor in interest to the land grant made by the acts aforesaid to the Sioux City and Pacific Railroad Company, and

Whereas, a certain tract of land within an odd numbered section has been selected under said acts by the duly authorized agent of the Missouri Valley Land Company, as shown by his original list approved by the local land officers, and now on file in the General Land office, and

Whereas, the said tract lies opposite the constructed line of said railroad and is particularly described as follows, to-wit:

North of Base Line and East of the Sixth Principal Meridian.

State of Nebraska.

Township Seventeen, Range Eleven.

The North half of the North East quarter of section twenty-one, containing eighty acres.

Now Know Ye, that the United States of America, in consideration of the premises and pursuant to the said Acts of Congress Have Given and Granted and by these presents Do Give and Grant unto the said Missouri Valley Land Company, successor in interest to the Sioux City and Pacific Railroad Company, all the tract of land
128 selected as aforesaid and described in the foregoing: Yet excluding and excepting from the transfer by these presents "All Mineral Lands," should any such be found to exist in the tract described in the foregoing, but this exclusion and exception according to the terms of the Statute, "shall not be construed to include coal and iron lands."

To Have and to Hold the same with the appurtenances thereof unto the said Missouri Valley Land Company, and to its assigns forever with the exclusion and exception as aforesaid.

In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this the twenty-third day of September, in the year of our Lord, one
[SEAL.] thousand eight hundred and ninety-seven, and of the Independence of the United States, the one hundred and twenty-second.

By the President:

WILLIAM McKINLEY.

F. M. McKEAN, *Secretary.*

C. H. BRUSH,
Recorder of the General Land Office.

129 Ex'd: M. M. C., C. M. B.

1898.

C. S. B. DEPARTMENT OF THE INTERIOR, S. S. M.
GENERAL LAND OFFICE,
WASHINGTON, D. C., *May* 17, 1898.

Messrs. Burdett, Thompson and Law, Attorneys, Mo. Valley Land Co., Washington, D. C.

SIRS: You are advised that I have this day notified the President of the Mo. Valley Land Co. of the discovery that the N. ½ N. E. ¼, Sec. 21, T. 17 N., R. 11 E., Nebraska, had been erroneously patented to that company, Sept. 23, 1897, for the reason that the land is also within the limits of the Grant to the Union Pacific Ry. Co., and the patent should have been issued to the companies jointly.

A reconveyance of the tract is therefore respectfully re-
130 quested that another patent for same may be issued to the companies jointly.

It is hoped that you will be pleased to give early attention to the matter.

Very respectfully, BINGER HERMANN,
Commissioner.

131 Ex'd C. M. B., H. D. L.

This indenture made and executed this 28th day of June, A. D., 1898, Witnesseth:

That, whereas, There was issued to the Missouri Valley Land Company, as successor to the Sioux City and Pacific Railroad Company, Patent No. 7, dated September 23rd, 1897, conveying to the said Missouri Valley Land Company the North half of the North-East quarter of Section Twenty-one (21), in Township Seventeen (17) north of base line in Range Eleven (11) East of the Sixth Principal Meridian, Nebraska, as a part of the lands inuring to the said Sioux City and Pacific Railroad Company under the Act of Congress approved July 1st, 1862, and

Whereas, The Honorable Commissioner of the General Land Office has decided that the conveyance of the whole of the tract aforesaid to the said Land Company, successor etc., was a mistake, and that the patent so issued should have been made to the said Missouri Valley Land Company and to the Union Pacific Railroad Company jointly, and said Commissioner has requested a reconveyance of the tract aforesaid, by the said Missouri Valley Land Company, so that the proper joint patent may be issued.

Now therefore, in consideration of the premises, the Missouri Valley Land Company, a corporation of the states of Iowa and Nebraska, does hereby re-convey, release and quit-claim unto the United States of America all the right, title and interest of the said Missouri Valley Land Company in and to the said North half of the North-East quarter of Section Twenty-one (21), Township Seventeen (17) North, Range Eleven East, Nebraska, acquired by, through or under the said Patent No. 7.

In witness whereof. The said Missouri Valley Land Company has caused these presents to be executed by its President and at-
132 tested by its Secretary, under its corporate seal, the day and year first above written.

[SEAL.] P. E. HALL, *President.*

Attested.
HENRY N. FERGUSON, *Secretary.*

STATE OF IOWA, *County of Linn, ss:*

Be it remembered, That on this 28th day of June, A. D., 1898, before me the undersigned, a Notary Public in and for said County, personally came P. E. Hall, who is to me personally known to be the identical person whose name is subscribed to the foregoing instrument as President of the Missouri Valley Land Company, the Grantor therein named, and acknowledged said instrument to be the act and deed of the said Company by the several officers whose names are subscribed to said instrument thereunto appointed, voluntarily done and executed.

In witness whereof, I have hereunto set my hand and Notarial Seal on the day and year in this certificate above written.

[NOTARIAL SEAL.] JAMES W. CLARK,
Notary Public.

133 [Endorsed:] 828. Noted Neb. Nov. 12, 1902–C. S. M. 2533. Quit-Claim Deed. Mo. Valley Land Company to United States of America. N½ NE¼ Sec. 21, Twp. 17, R. 11 East, Nebraska. Entered in Numerical index and Rec'd for record this 27th day of August A. D., 1902 at 8 o'clock A. M. and recorded in book 36 at page 7. F. W. Kenny, Jr. County Clerk. By M. E. Gaines, Dep. Washington Co., Nebr. Compared. Pd. $1.15. 1898–70895-1. 153440–1902.

134 Ex'd C. M. B., M. M. C.

4–446.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved July 1, 1862, as amended by the act of July 2, 1864, "to aid in the construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for Postal, Military and other purposes," authority is given to the Union Pacific and the Sioux City and Pacific Railroad Companies, "to construct a Railroad and Telegraph Line," under certain conditions and stipulations as expressed in said Acts; and provision is made for granting to the said The Union Pacific Railroad Company, "every alternate section of public land designated by odd numbers, to the amount of ten alternate sections per mile on each side of the

said railroad, and to the said Sioux City and Pacific Railroad Company," alternate sections of land for ten miles in width on each side of the same along the whole length of said branch, "not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the lines or routes of said roads are definitely fixed; and

Whereas, it is shown by evidence on file in the General Land Office, that the Commissioners appointed by the President, under the provisions of the aforesaid Acts, have reported to the Secretary of the Interior that said Railroad and Telegraph lines have been completed and equipped in the manner prescribed by said Acts and the same accepted by the President; and

135 Whereas, by articles of agreement entered into between the said The Union Pacific Railroad Company, the Kansas Pacific Railway Company and Denver Pacific Railway and Telegraph Company, said companies were amalgamated and consolidated under the name of The Union Pacific Railway Company, on the 24th day of January, 1880, as shown by a certified copy of the original articles of consolidation filed with the Secretary of the Interior on the 26th day of January, 1880, by Shellabarger and Wilson, the attorneys for said The Union Pacific Railway Company; and

Whereas, it is shown by evidence on file in the General Land Office, that the Missouri Valley Land Company, a corporation organized under the laws of the States of Iowa and Nebraska, became by purchase, the successor in interest to the land grant made by the Acts aforesaid to the Sioux City and Pacific Railroad Company; and

Whereas, a certain tract of land has been listed under the Acts aforesaid by the duly authorized land agents of the said The Union Pacific Railway and Missouri Valley Land Companies as shown by their original lists, approved by the local land officers and now on file in the General Land Office; and

Whereas, the said tract of land lies coterminous to the constructed line of said roads, and is particularly described as follows, to-wit:

136 North of Base Line and East of the Sixth Principal Meridian, State of Nebraska.

Township Seventeen, Range Eleven.

The North Half of the Northeast Quarter of Section Twenty-one, Containing Eighty Acres.

Now know ye, that the United States of America in consideration of the premises and pursuant to the said acts of Congress Have Given and Granted and by these presents Do Give and Grant unto the said The Union Pacific Railway Company, successor in interest to The Union Pacific Railroad Company, and Missouri Valley Land Company, successor in interest to the Sioux City and Pacific Railroad Company and to their successors and assigns, the tract of land listed as aforesaid and embraced in the foregoing: Yet excluding and excepting from the transfer by these presents, "All Mineral Lands," should any such be found to exist in the tract described in the fore-

going, but this exclusion and exception, according to the terms of the Statute, shall not be construed to include coal and iron land.

To Have and to Hold the said tract with the appurtenances thereof unto the said The Union Pacific Railway and Missouri Valley Land Companies, and to their successors and assigns forever, with the exclusion and exception aforesaid.

137 In testimony whereof, I, Theodore Roosevelt, President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, this the twenty-fourth day of July, in the year of our Lord, one thou-
[SEAL.] sand nine hundred and three and of the Independence of the United States the one hundred and twenty-eighth.

By the President:

T. ROOSEVELT.

F. M. McKEAN, *Secretary.*

C. H. BRUSH,
Recorder of the General Land Office.

138 And be it remembered that a true and correct copy of the record of the deed from the Union Pacific Railway Company to Carston Wrich, recorded in Book 27 of the Deed Records of Washington County, Nebraska, at pages 8-9-10 & 11 thereof, together with a copy of the record in relation to the time when the same was filed in the office of the County Clerk of Washington County, Nebraska, is attached hereto as Exhibit No. 1 of the Bill of Exceptions, and is by consent of all of the parties to this suit substituted for the original record produced and introduced on the trial of this cause.

And be it further remembered that the papers marked Exhibit A and attached hereto showing certain proceedings in the General Land Office of the United States at Washington, D. C., and certain matters of record therein, constitute the original exhibit produced and introduced by defendants, Missouri Valley Land Company and the Iowa Railroad Land Company, as Exhibit A on the trial of this cause, and are hereby made of record herein, and a part of this Bill of Exceptions.

And be it further remembered that the evidence hereinbefore set forth in this Bill of Exceptions constitutes all of the evidence offered or received in evidence during the trial of said cause, and that the within and foregoing Bill of Exceptions contains a complete record of all oral proceedings had at and during the trial of said cause, including all objections, motions and exceptions made and preserved by the respective parties.

And be it further remembered that to the findings, decision and final decree of this Court, rendered and made of record in this cause on the 24th day of October, A. D. 1904, the defendants, the Missouri Valley Land Company and the Iowa Railroad Land Company, and each of them, took and preserved separate and seasonable exceptions alike to said findings, decision, and to said decree, separately.

139 And now, on this 9th day of January A. D., 1905, it being within the time granted by the Court to said defendants, Missouri Valley Land Company, and the Iowa Railroad Land Company, to present, settle and file their Bills of Exceptions in this cause, said defendants present this, their Bill of Exceptions as aforesaid, herein, and pray that the same be granted, allowed, and made of record in said cause, which is on said date last named accordingly done.

In witness whereof, I, Edmund M. Bartlett, the Judge presiding at said trial, have set my hand hereto, and have also written my name, at Omaha, in the State of Nebraska, on the day and year aforesaid.

EDMUND M. BARTLETT,
Late Judge of the 4th Judicial District in and for the State of Nebraska, Presiding as Aforesaid at said Trial.

140 [Endorsed:] 14233. Carsten Wrich *v.* U. P. R. R. Co. *et al.* Bill of Exceptions. Filed Jan. 30 1905 Theo Haller, Clerk District Court. Supreme Court of Nebraska. Filed Apr. 15 1905 H. C. Lindsay, clerk.

140*a* And afterward, to wit, on the 20th day of February, the following among other proceedings were had and done in said Supreme Court, to-wit:

The following causes were argued by counsel and submitted to Commission No. 1:

14233.

WRICH
v.
U. P. RY. CO. ET AL.

Appeal from Washington County.

And afterward, to-wit, on the 20th day of June, there was rendered by said Supreme Court and entered of record upon the Journal thereof a certain judgment in the words and figures following, to-wit:

No. 14233.

CARSTON WRICH, Appellee,
vs.
THE UNION PACIFIC RAILWAY CO. ET AL., Appellees, Impleaded with THE MISSOURI VALLEY LAND CO. ET AL., Appellants.

Appeal from the District Court of Washington County.

This cause coming on to be heard upon appeal from the district court of Washington county, was argued by counsel and submitted to the court; upon full consideration whereof the court doth find

no error apparent in the record and judgment of said district
140*b* court; it is therefore considered, ordered and adjudged that the judgment of said district court be, and the same hereby is, affirmed; that appellees pay all costs incurred herein by them, taxed at $—, and have and recover from appellants all their costs so expended herein; that appellants pay all costs incurred herein by them, taxed at $—, for all of which execution is hereby awarded, and that a mandate issue accordingly.

And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Opinion pursuant to which the foregoing judgment was rendered, which opinion is in the words and figures following, to-wit:

140*c* No. 14233.

WRICH
v.
UNION PACIFIC RAILWAY CO.

Opinion. Filed June 20, 1906.

Commissioner's Opinion, Department No. 1.

1. Wiese *v.* U. P. Ry. Co., *et al.*, No. 14232, followed and Held, to control the issues in this case.

141 OLDHAM, *C.:*

This is a companion case to No. 14232, Wiese *v.* Union Pacific Railway Company, and the two cases were presented together in the oral argument. The two cases were tried together in the district court, and a judgment quieting the title in the plaintiff was rendered in each of them.

The facts, so far as they affect the conclusion to be reached, are practically the same. In this case the plaintiff, Carsten Wrich, purchased the land by contract from the Union Pacific Railroad Company in 1881 and received his deed in 1890. He took possession immediately after his purchase and has claimed the land as his own ever since. In September, 1893, plaintiff Wrich undertook to make a cash entry of the land in the same manner as his neighbor Wiese did, so that every question involved in the controversy is fully covered in the opinion in case No. 14232, *supra*. For the reasons given in that opinion, we recommend that the judgment of the district court be affirmed.

Ames, C. and Epperson, C. concur.

By the COURT: For the reasons given in the foregoing opinion, the judgment of the district court is affirmed.

142 And afterward, to-wit, on the 31st day of July, there was issued out of the office of the Clerk of said Supreme Court a certain Mandate in the words and figures following, to-wit:

Mandate.

In the Supreme Court of the State of Nebraska, Sitting at Lincoln, January Term, 1906.

To the District Court of the Fourth Judicial District, sitting in and for the county of Washington, Greeting:

Whereas, in a late action before you, wherein Carston Wrich was plaintiff and the Union Pacific Railway Company, Sioux City and Pacific Railway Company, the Missouri Valley Land Company and the Iowa Railroad Land Company were defendants, the said plaintiff recovered a judgment against the defendants, the Missouri Valley Land Company and Iowa Railroad Land Company, upon a transcript of which record and proceedings in your said Court the said defendants Missouri Valley Land Company and Iowa Railroad Land Company prosecuted an appeal to the Supreme Court of the State of Nebraska, upon a trial of which cause in said Supreme Court, during the January Term, A. D., 1906, upon an opinion by the Commissioners of said Supreme Court, filed in said cause, it was considered by said Court that the judgment rendered by you in favor of said plaintiff and against said defendants The Missouri Valley Land Company and Iowa Railroad Land Company be affirmed at the costs of the said defendants The Missouri Valley Land Company and Iowa Railroad Land Company, taxed at $50.95.

Now, Therefore, You are commanded, without delay, to cause execution to issue, carrying into effect your said judgment in the manner provided by law.

143 Witness, The Honorable Samuel H. Sedgwick, Chief Justice, and the Seal of said Court, at Lincoln, this thirty-first day of July, 1906.

[SEAL.] H. C. LINDSAY, *Clerk.*

Endorsed: No. 14233. Mandate. Supreme Court State of Nebraska. Wrich *v.* U. P. R. R. Co. *et al.* Costs in Supreme Court $50.95 $8.25 due Clerk Supreme Court 42.70 due Wrich, printer's fees. $10.00 paid on Clerk's costs at commencement of suit.

144 And afterward, to-wit, on the 2nd day of August, there was filed in the office of the Clerk of said Supreme Court a certain Writ of Error, which original Writ of Error is hereto attached and is in the words and figures following, to-wit:

145 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the State of Nebraska, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Nebraska, before you, being the highest court of law or equity in said state in which a decision could be had on said suit between Carsten Wrich, plaintiff and appellee, and the Missouri Valley Land Company and the Iowa Railroad Land Company, defendants and appellants, wherein was claimed by said defendants and appellants certain privileges and immunities and certain title and rights under the constitution and laws of the United States, and under the authority of the United States, and the decision was against the rights, title, privileges and immunities specifically set up and claimed under the aforesaid constitution and laws and authority aforesaid, a manifest error hath happened, to the great damage of the said defendants and appellants, Missouri Valley Land Company and the Iowa Railroad Land Company, plaintiffs in error, as by their complaint appears, we, being willing that said error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 31st day of August, next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

146 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 1st day of August A. D., 1906.

[Seal United States Circuit Court, District of Nebraska.]

GEO. H. THUMMEL,
Clerk of the United States Circuit Court in and for the District of Nebraska,
By JOHN NICHOLSON, *Deputy.*

Allowed.

CHAS. B. LETTON,
Justice of the Supreme Court of the State of Nebraska.
JOHN B. BARNES,
Presiding Judge of Supreme Court of Neb. in Absence of Sedgwick, C. J., from this State.

I hereby accept service of the above writ of error and acknowledge receipt of copy thereof this 2 day of August, A. D., 1906.

JAMES H. VAN DUSEN,
Attorney for Asmus Wiese, Defendant in Error.

Writ allowed in absence of Chief Justice from the State.

JOHN B. BARNES,
Presiding Judge of Supreme Court of Nebraska.

Service of the above writ of error & receipt of a copy thereof is accepted as of this date reserving the right to take advantage of any defects in the procedure by which this cause is transfer-ed to the United States Supreme Court.

Dated Sept. 12th 1906.

JAMES H. VAN DUSEN,
Attorney for Asmus Wiese, Defendant in Error.

[Endorsed:] 14233 In Supreme Court of Nebraska Carsten Wrich *vs.* Mo. Valley Land Co. Writ of Error Supreme Court of Nebraska Filed Aug. 2 1906 H. C. Lindsay Clerk Supreme Court of Nebraska Filed Aug. 24 1906 H. C. Lindsay Clerk.

147 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Supersedeas Bond, in the words and figures following, to-wit:

148 *Supersedeas Bond.*

Know all men by these presents, That we, the Missouri Valley Land Company and the Iowa Railroad Land Company, corporations, as principals, and L. D. Richards, of Fremont, Dodge County, Nebraska, as surety, are held and firmly bound unto Carsten Wrick, of Washington County, Nebraska, in the penal sum of Five Hundred ($500) Dollars, well and truly to be paid unto the said Carsten Wrich, his heirs, personal representatives and assigns. We bind ourselves, our successors, personal representatives and assigns firmly by these presents.

Dated this 31st day of July, 1906.

The condition of this obligation is such, that, whereas, the said Missouri Valley Land Company and Iowa Railroad Land Company have sued out a Writ of Error from the Supreme Court of the United States to the Supreme Court of Nebraska in a certain cause lately pending in the Supreme Court of Nebraska wherein said Carsten Wrich was plaintiff and appellee, and said Missouri Valley Land Company and said Iowa Railroad Land Company were defendants and appellants.

Now if said plaintiffs in error shall prosecute their writ to effect, and shall answer all damages and costs in event they fail to make good their plea, then this obligation to be void, otherwise in full force and virtue.

MISSOURI VALLEY LAND COMPANY, *Principal,*
By WM. G. CLARK, *Its Attorney.*
IOWA RAILROAD LAND COMPANY, *Principal,*
By WM. G. CLARK, *Its Attorney.*
L. D. RICHARDS, *Surety.*

149 The foregoing bond is hereby approved to operate as a supersedeas this 2nd day of August, 1906.

CHAS. B. LETTON,
Justice Supreme Court of Nebraska.
JOHN B. BARNES,
Presiding Judge of Supreme Court of Nebraska in Absence of Chief Justice S. H. Sedgwick.

[Endorsed:] 14233. In Supreme Court of State of Nebraska. Carston Wrich *vs.* Missouri Valley Land Co., *et al.* Supersedeas Bond. (Supreme Court of Nebraska Filed Aug. 2 1906 H. C. Lindsay, Clerk) (Supreme Court of Nebraska Filed Aug. 24 1906 H. C. Lindsay, Clerk.)

150 And on the same day there was filed in the office of the Clerk of said Supreme Court a certain Citation, which said original Citation is hereto attached, and is in the words and figures following, to-wit:

151 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Carsten Wrich, Defendant in Error:

You are hereby cited and admonished to be and appear within thirty days after this date at a term of the Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of Nebraska, wherein the Missouri Valley Land Company and the Iowa Railroad Land Company are plaintiffs in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

In the absence of the Chief Justice of the State of Nebraska from said state, witness the Honorable John B. Barnes, presiding judge of the Supreme Court of Nebraska, this 24 day of August, A. D., 1906.

JOHN B. BARNES,
Presiding Judge of the Supreme Court of the State of Nebraska in the Absence of said Chief Justice.

I hereby accept service of the above citation and acknowledge receipt of a copy thereof this — day of Sept. A. D., 1906.

———,
Attorney for Defendant in Error.

Service of the above citation and receipt of a copy thereof is accepted as of this date, reserving the right to take advantage of any

defects in the procedure by which this case is transferred to the United States Supreme Court.

JAMES H. VAN DUSEN,
Attorney for Asmus Wiese, Defendant in Error.

Dated Sept. 12th, 1906.

[Endorsed:] 14233. Citation. Supreme Court of Nebraska Filed Sep. 14 1906 H. C. Lindsay, Clerk.

152 And afterward, to-wit, on the 14th day of September, there was filed in the office of the Clerk of said Supreme Court a certain Stipulation in the words and figures following, to-wit:

In the Supreme Court of Nebraska.

CARSTON WRICH, Appellee,
vs.
MISSOURI VALLEY LAND COMPANY ET AL., Appellants.

Stipulation.

Subject to the approval of the court, it is agreed that the Clerk may attach and certify the original transcript of the bill of exceptions on file in this cause to the Supreme Court of the United States on writ of error, thereby dispensing with the necessity of causing a copy of the same to be made.

JAMES H. VAN DUSEN,
Attorney for Appellees.
CHAS. A. CLARK & SON,
WM. G. CLARK,
Attorneys for Appellants.

Endorsed: 14233. Stipulation. Supreme Court of Nebraska. Filed Sep. 14 1906 H. C. Lindsay, Clerk.

153 STATE OF NEBRASKA, *ss:*

I, H. C. Lindsay, Clerk of the Supreme Court of the State of Nebraska, do hereby certify that the foregoing is a true and correct transcript of the record, opinion, final judgment and supersedeas bond, with the order of approval to operate as a supersedeas endorsed thereon, in the case of Missouri Valley Land Company and Iowa Railroad Land Company, plaintiffs in error, *vs.* Carsten Wrich, defendant in error, as full, true and complete as the same are of record and on file in my office.

I further certify that the Bill of Exceptions attached to and made a part of this record is the original Bill of Exceptions filed in said Supreme Court in said case on the 15th day of April, A. D., 1905.

I further certify that the writ of error and citation are hereto attached in original form, and that true and correct copies thereof have been retained in my office, and this return is made in obedience to said writ of error.

In testimony whereof, witness my signature and the Seal of said Court at Lincoln, this 19th day of September, A. D., 1906.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk of the Supreme Court of Nebraska.

Endorsed on cover: File No. 20,369. Nebraska supreme court. Term No. 102. The Missouri Valley Land Company and the Iowa Railroad Land Company, plaintiffs in error, *vs.* Carsten Wrich. Filed September 22, 1906. File No. 20,369.

Office Supreme Court, U. S.
FILED
OCT 10 1907
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 192.

THE MISSOURI VALLEY LAND COMPANY ET AL.,
Plaintiffs in Error,

vs.

CARSTEN WRICH,
Defendant in Error.

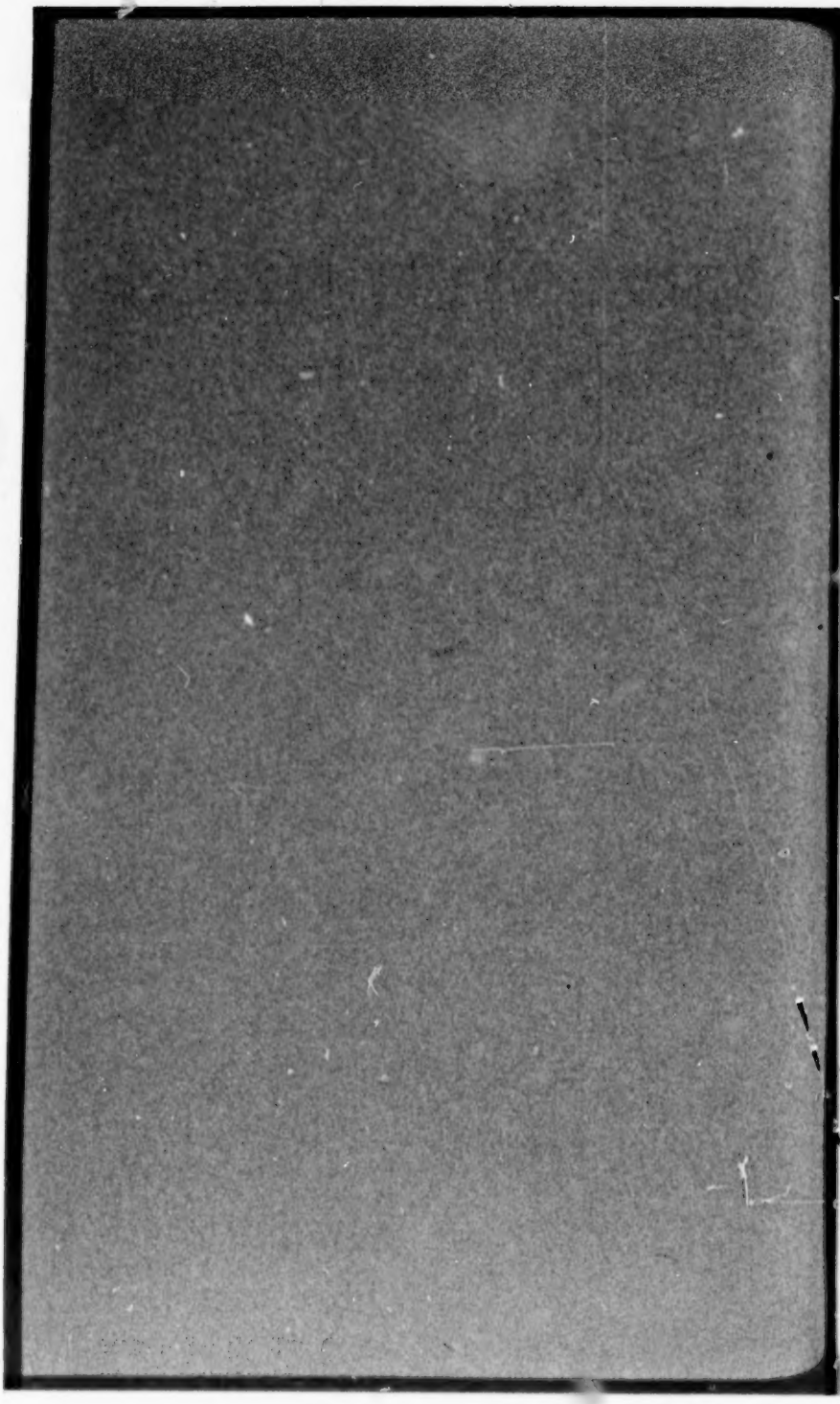
In Error to the Supreme Court of the State of Nebraska. On Motion of Defendant in Error to Dismiss or Affirm.

BRIEF FOR PLAINTIFFS IN ERROR

BY

CHARLES A. CLARK.

Brown Bros., Law Printers, 358 Dearborn St., Chicago.



SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1907.

No. 102.

THE MISSOURI VALLEY LAND COMPANY ET AL.,
Plaintiffs in Error,

vs.

CARSTEN WRICH,
Defendant in Error.

In Error to the Supreme Court of the State of Nebraska. On Motion of Defendant in Error to Dismiss or Affirm.

BRIEF FOR PLAINTIFFS IN ERROR.

The facts disclosed by the record so far as pertinent and material to the motion will be stated in connection with the points upon which defendant in error relies.

I.

ISSUANCE OF THE WRIT.

By Section 6, Article VI of the Constitution of Nebraska, it is provided:

> "SEC. 6 (Chief Justice.) The judge of the supreme court having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and as such shall preside at all terms of the supreme court; and in case of his absence the judge

having in like manner the next shortest term to serve shall preside in his stead."

The Record (p. 66, bottom; 67, top) shows the following endorsements at the foot of the writ of error:

"Allowed.

CHAS. B. LETTON,
Justice of the Supreme Court of the State of Nebraska.

JOHN B. BARNES,
Presiding Judge Supreme Court of Nebraska in absence of Sedgwick, C. J., from the State."

(Page 67.)

"Writ allowed in absence of Chief Justice from the State.

JOHN B. BARNES,
Presiding Judge of Supreme Court of Nebraska."

(Page 68.)

The citation concludes as follows:

"In the absence of the Chief Justice of the State of Nebraska from said state, witness the Honorable John B. Barnes, presiding judge of the Supreme Court of Nebraska, this 24 day of August, A. D. 1906.

JOHN B. BARNES,
Presiding Judge of the Supreme Court of the State of Nebraska in the absence of said Chief Justice."

(Record, p. 68, bottom.)

Here we have a formal certification by Judge Barnes, who allowed the writ, that the Chief Justice was absent from the state, and that he was the Presiding Judge of the Supreme Court of Nebraska in the absence of the Chief Justice from the State.

This includes *ex vi termini* a certification by Judge Barnes that he has "the next shortest term to serve" after the Chief Justice—otherwise he could not be Presiding Judge in the absence of the Chief Justice.

How are these facts to be made to appear if not by a certification of this character? Must there be an affidavit attached

to the writ and put into the record that the Chief Justice is absent from the state, and that the judge issuing the writ has "the next shortest term to serve," and is therefore the Presiding Judge?

Counsel for the plaintiff in error hereby states professionally to this court that the Chief Justice of the Court of Nebraska was at the date of the allowance of the writ absent from the state, in Europe; that his Honor, Judge Barnes, who allowed the writ, had "the next shortest term to serve" after the Chief Justice, and was in fact the Presiding Judge during his absence.

As stated by counsel for defendant in error in their brief (page 2):

> "This case is in all respects similar to the case of the *Missouri Valley Land Company and Iowa Railroad Land Company* v. *Asmus Wiese*, No. 101, October term, 1907, the facts, motions to dismiss, and briefs in both cases being similar."

To restate the facts, the issues, the federal questions involved, whether or not these questions are so frivolous that argument for plaintiffs in error should not be heard, would be a mere matter of repetition and supererogation. The motion to dismiss or affirm is, therefore submitted on the showing made and authorities cited by and for plaintiffs in error in the companion case, No. 101, of these plaintiffs in error v. Asmus Wiese.

The decision of the like motion by defendant in error in that case will necessarily govern in the instant case.

CHAS. A. CLARK,
For Plaintiffs in Error.

SUPREME COURT OF [redacted]

OCTOBER TERM, [redacted]

No. [redacted]

THE MISSOURI VALLEY LAND COMPANY,

vs.

CARSTEN WEBER,

In Error to the Supreme Court of Nebraska.

BRIEF FOR PLAINTIFFS IN ERROR.

BY

CHARLES A. CLARK.

Rees Printing Co., Law Printers, 409 Dearborn St., Chicago.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 102.

THE MISSOURI VALLEY LAND COMPANY ET AL.,
Plaintiffs in Error.

vs.

CARSTEN WRICH.

In Error to the Supreme Court of Nebraska.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

This case is in all respects similar to the case of *The Missouri Valley Land Company et al., Plaintiffs in Error*, v. *Asmus Wiese*, No. 101, current term.

Wrich brought his suit in equity in the state courts of Nebraska, alleging himself to be in possession of the land in controversy, and seeking to establish and quiet his title thereto. His claim is set up in second amended petition. (Record 10-11.)

This petition shows title to a moiety of the tract in dispute under the purchase and conveyance of the interest of the Union Pacific Railroad Company therein; that plaintiff in error purchased the land of one Lantry in March, 1881; received the deed from the Union Pacific Railroad Company March 12,

1890, and alleges continuous and adverse possession since March, 1881, which under the statute of limitations of Nebraska would give him title to the other moiety by prescription. That statute is as follows:

> "5595 SEC. 5. (LIMITATION.) Civil actions can only be commenced within the time prescribed in this title, after the cause of action shall have accrued.
>
> "5596 SEC. 6. (RECOVERY OF REAL PROPERTY—MORTGAGES.) An action for the recovery of the title or possession of land, tenements, or hereditaments, can only be brought within ten years after the cause of such action shall have accrued. This section shall be construed to apply also to mortgages."
>
> 5595 and 5596 Complied Statutes of Nebraska, Annotated, 1897.

The record shows without conflict that defendant in error was in actual and exclusive possession of the real estate, as alleged by him, from 1881 to 1904, when the cause was tried in the state court.

The real question is, was this adverse possession, and did it toll the title of the plaintiff in error, The Missouri Valley Land Company, prior to its patent for a moiety of the land?

The tract is within the overlapping grants of the Union Pacific Railroad Company and the Sioux City & Pacific Railroad Company under the Acts of Congress of July 1, 1862, and July 2, 1864; so that as finally decided each company was entitled to a moiety of the land. The pleadings (Record 10 to 17) are substantially the same as in the Wiese case, No. 101, current term. The facts as to the indemnity school selection for the State of Nebraska, the various rulings and decisions of the Land Department in the administration of the grant, and attempt of Wrich to enter the land, and the decision of the Commissioner thereon, together with reversal of this decision by the Secretary of the Interior, are precisely the same as in the Wiese case; and the dates of the various decisions of the Land Department are the same. A patent was erroneously issued to

The Missouri Valley Land Company, plaintiff in error, for the whole tract on the same date as in the Wiese case. That company re-conveyed to the United States on the same date, and a subsequent patent for a moiety was issued to it in 1903 on the same date as in the Wiese case. There was judgment in the trial court for defendant in error. On appeal this judgment was affirmed by the Supreme Court of Nebraska (Record 63-4), whereupon this writ of error was sued out. The opinion in the court below merely refers to the decision in the Wiese case and affirms the judgment of the trial court for the reasons given in that opinion. (Record 64.) The same motion for a new trial was filed as in the Wiese case (Record 19-20); the facts on all material points are the same; the questions of law involved are identical.

ASSIGNMENT OF ERRORS.

Plaintiffs in error say there is manifest error upon the face of the record in this:

1. The court below erred in holding that the grant to the Sioux City & Pacific Railroad Company under which plaintiffs in error claim was a grant *in praesenti* of the legal title to a moiety of the land in controversy.

2. The said court erred in holding that the legal title to a moiety of the land in controversy passed to the Sioux City & Pacific Railroad Company, under whom plaintiffs in error claim, prior to the issuance of patent therefor.

3. The said court erred in holding that the possession of defendant in error was not in subserviency to the United States, and the rulings of the Land Department, up to August 25, 1896, that the land was excluded from the grants under Acts of Congress of July 1, 1862, and July 2, 1864, by reason of an indemnity school selection made by the State of Nebraska in 1858.

4. The said court erred in holding that the alleged adverse

possession of defendant in error continued to run during the period of his contest to enter the land in controversy, viz., from September 25, 1893, until August 25, 1896.

5. The said court erred in refusing to hold and decide that from September 25, 1893, to August 25, 1896, the alleged adverse possession of defendant in error could not toll the title of plaintiffs in error under their patent from the United States of date July 24, 1903.

6. The said court erred in holding that the alleged adverse possession of defendant in error continued to run during the period that the title to the land in controversy was re-vested in the United States, viz., from June 28, 1898, to July 24, 1903, the date of the Government patent under which plaintiffs in error claim.

7. The said court erred in refusing to hold and decide that the alleged adverse possession of defendant in error could not toll or affect the title of plaintiffs in error from June 28, 1898, to July 24, 1903, the date of the Government patent under which plaintiffs in error claimed, during which period the title to the land in controversy was vested in the United States.

8. The said court erred in holding that the alleged adverse possession of defendant in error was not that of tenant in common with plaintiff in error and in subserviency to the result of the contests before the Land Department of the United States up to August 25, 1896, when it was finally decided by the Land Department that the Sioux City & Pacific Railroad Company was entitled to a moiety of the land.

9. The said court erred in holding that the legal title to the land in controversy was not vested in the United States up to September 21, 1897, and that the alleged adverse possession of defendant in error was not in subserviency thereto.

10. The court below erred in refusing to give force or effect to the patent from the United States to plaintiffs in error specially set up and pleaded by them.

11. The said court erred in rendering judgment for defendant in error and against plaintiffs in error.

BRIEF AND ARGUMENT.

The points of fact and of law are the same as in No. 101, the Wiese case above mentioned. To re-state them would be mere repetition.

The argument for plaintiffs in error is the same as in No. 101.

And upon the Brief and Argument in that case this case is respectfully submitted for plaintiffs in error.

CHAS A. CLARK.

SUPREME COURT OF THE UNITED STATES

THE MISSOURI VALLEY LAND COMPANY, ET AL.,
Plaintiffs in Error,

vs.

CARSTEN WEICH,
Defendant in Error.

No. 102.

October Term A. D., 1897.

BRIEF FOR DEFENDANT IN ERROR.

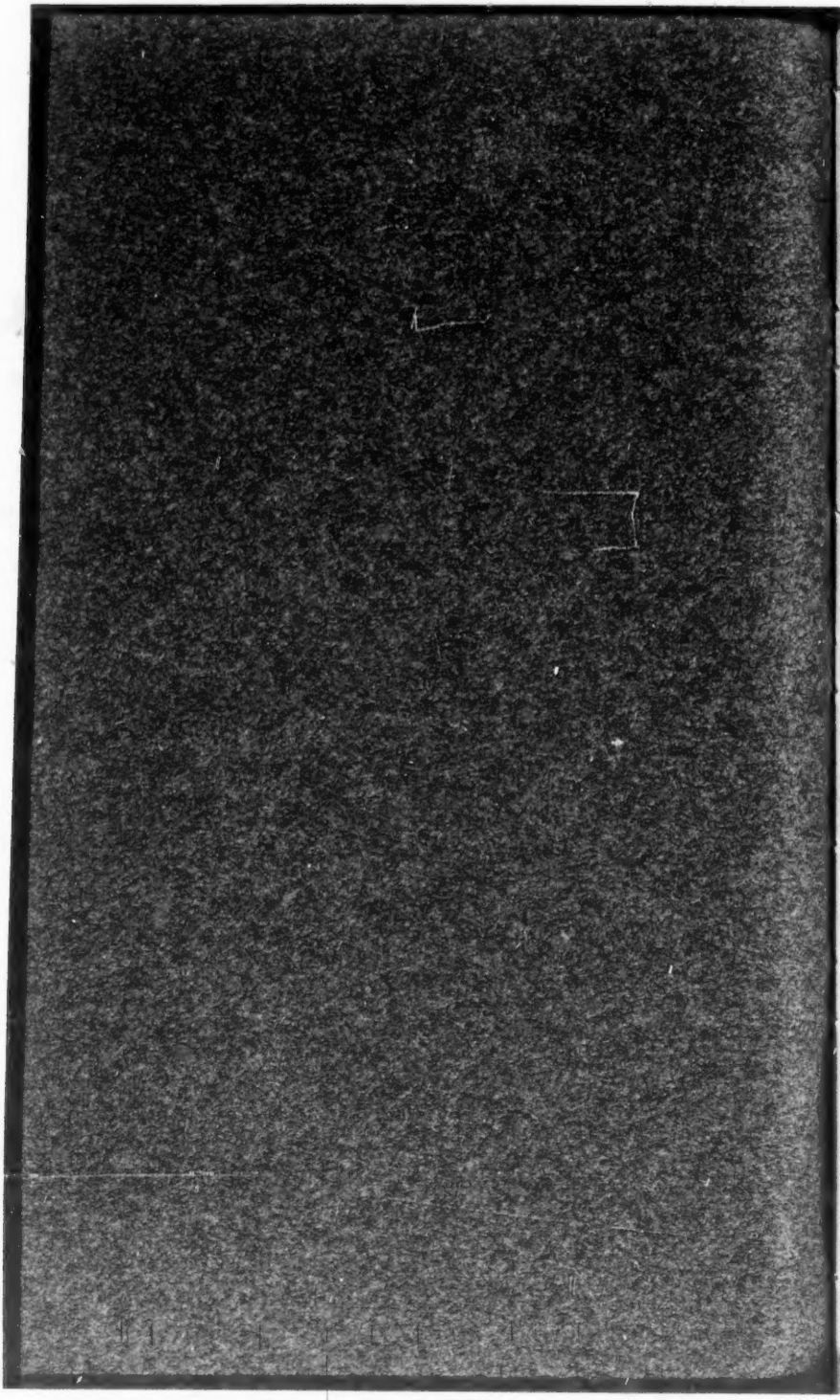
By

JAMES H. VANDUSEN,

IRVING F. BAXTER,

E. F. COLLADAY,
Of Counsel.

ASH. W. BARNEL, PRINTER, OMAHA, NEB.



SUPREME COURT OF THE UNITED STATES.

THE MISSOURI VALLEY LAND COMPANY, ET AL.,
Plaintiffs in Error,
vs.
CARSTEN WRICH,
Defendant in Error,

No. 102.

October Term A. D., 1907.

BRIEF FOR DEFENDANT IN ERROR

BY

JAMES H. VANDUSEN,

IRVING F. BAXTER.

E. F. COLLADAY,
Of Counsel.

STATEMENT OF CASE.

This case is in all respects like the case of the Missouri Valley Land Company et al., Plaintiffs in Error, vs. Asmus Weise, Defendant in Error, No. 101, Current Term. The facts in the two cases are substantially the same and the records are almost identical. We therefore respectfully submit this case on the brief and argument in that case.

E. F. COLLADAY,
Of Counsel.

JAMES H. VAN DUSEN,
IRVING F. BAXTER,
For Defendant in Error.

FILED.
SEP 27 1907
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

NO. 102.

THE MISSOURI VALLEY LAND COMPANY AND THE IOWA RAILROAD LAND COMPANY,
Plaintiffs in Error,

vs.

CARSTEN WRICH, Defendant in Error.

MOTION TO DISMISS OR AFFIRM, AND BRIEF.

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Attorneys for Defendant in Error.

In the Supreme Court of the United States.

THE MISSOURI VALLEY LAND COMPANY AND THE IOWA RAILROAD LAND COMPANY,
Plaintiffs in Error,

vs.

CARSTEN WRICH,
Defendant in Error.

No. 102.
October Term,
1907.

Motion to Dismiss or Affirm.

Comes now Carsten Wrich, defendant in error herein, and moves the Court to dismiss the writ of error in this case for want of jurisdiction, because the writ of error herein was not allowed by the Chief Justice of the Supreme Court of Nebraska and it does not appear in the record by what authority the Judge who allowed the writ styles himself "Presiding Judge of the Supreme Court of Neb.", and because there is no Federal question involved in said cause; or if the writ of error shall not be dismissed, that the judgment of the Supreme Court of the State of Nebraska be affirmed on the ground that, although in the opinion of this Court the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken

for delay only and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Counsel for Carsten Wrich, Defendant in Error.

BRIEF.

This case is in all respects similar to the case of the Missouri Valley Land Company and Iowa Railroad Land Company vs. Asmus Wiese, No. 101, October term 1907, the facts, motions to dismiss, and briefs in both cases being similar.

As to the first point raised in the motion, the writ of error herein was allowed in the first instance by "Chas. P. Letton, Justice of the Supreme Court of the State of Nebraska," and at a later date, an additional signature was added as follows: "John B. Barnes, Presiding Judge of Supreme Court of Neb. in absence of Sedgwick, C. J., from this State." There is no certificate or other evidence in the record to support this signature and the recital appended as a part thereof. It is not shown that the Chief Justice was absent from the State, nor that Judge Barnes was the judge having the next shortest term and thereby presiding judge. When the writ was served upon counsel for defendant in error he stated over his signature (Record p. 67) that he reserved all rights to take advantage of defects. Under the statement of this Court in the next to the last paragraph of the opinion in Havnor v. New York (170 U. S., 411) we think the writ was not properly allowed.

A perusal of the second amended petition (Record, pp. 10 and 11), and cross petition (record, pp. 12–15), and opinion of lower court (record, p. 64), will show at once that there is no Federal question involved in this case. It is merely a suit to quiet title brought by one of two tenants in common against the other, both of whom base their claims of title upon the same grant from the United States, the plaintiff (defendant in error) claiming title against his co-tenant by adverse possession. We think the decision of this Court in Corkran Oil Company v. Arnaudet (199 U. S., 182), settles the question here presented. Also in the case of Dibble v. Bellingham Bay Land Company, (163 U. S., 74), where the litigants claimed title under the same grant from the United States and one brought suit against the other to quiet title, claiming against the other by adverse possession, this Court held there was no Federal question.

As to the remaining point in the motion, the only shadow of a Federal question in this case is that both parties trace their claims of title to the original grantees from the United States under an Act of Congress, the one claiming that the title of the United States was fully divested by the grant, and the other claiming that the title was suspended until patent actually issued. The Supreme Court of Nebraska found that the conditions of the Acts of Congress of July 1, 1862, and July 2, 1864, were fully complied with, and has decided as a consequence that title passed immediately upon compliance with those conditions. That those conditions were complied with is not a point in dispute in this case. The plaintiff in error in this case contends, in effect, that although the terms of the grants from the United States were complied with prior to January 1, 1870, the title remained in the United States until the issuance of the patent July 24, 1903, and that contention,

we respectfully insist, is frivolous. A patent is merely evidence of a grant; it adds nothing to the grantee's rights, but only furnishes him with convenient proof thereof.

Carroll v. Safford, 3 How. 441;
Railway Co. v. Prescott, 16 Wall. 603;
Railway Co. v. McShane, 22 Wall. 444;
Simien v. Perrodin, 35 La. Ann. 931;
Barney v. Dolph, 97 U. S., 652;
Stark v. Starrs, 6 Wall. 402.
Moran v. Horsky, 178 U. S., 212;
Joplin v. Chachere, 192 U. S , 94. 98;

"The execution and delivery of the patent after the right to it had become complete were the mere ministerial acts of the officers charged with that duty. * * * The State courts could properly hold under the circumstances of this case that the Statute of Limitations was set in motion when that right accrued, and was not postponed to the issue of the patent." Dibble v. Bellingham Bay Land Company (163 U. S., 74).

"Adverse possession under claim of right for the period prescribed by the Statute of Limitations of the State of Utah, after the act granting the land and before a patent has been issued by the United States to the Central Pacific Railroad Company for a part of its land within that State, and not within its right of way, will prevail against the patent."

Toltec Ranch Company v. Cook, (191 U. S. 532).

Respectfully submitted,

JAMES H. VAN DUSEN,
EDWARD F. COLLADAY,
Attorneys for Defendant in Error.

September 18, 1907.

MISSOURI VALLEY LAND COMPANY *v.* WRICH.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 102. Argued January 10, 1908.—Decided February 3, 1908.

Decided on authority of *Missouri Valley Land Co.* v. *Wiese*, *ante*, p. 234.

THE facts are stated in the opinion.

Mr. Charles A. Clark for plaintiff in error.

Mr. James H. Van Dusen, with whom *Mr. Edward F. Colladay* was on the brief, for defendant in error.[1]

MR. JUSTICE WHITE delivered the opinion of the court.

This case was argued with *Missouri Valley Land Co.* v. *Wiese*, No. 101, of this term, just decided, *ante*, p. 234, and in all essential particulars the two cases are alike. Wrich purchased his land in 1881 from the Union Pacific Railroad Company and received his deed in 1890. The land lay within overlap grants to the Union Pacific Company and the Sioux City and Pacific Railroad Company. Wrich took possession immediately after his purchase, and ever afterwards held and claimed the land as his own. In September, 1893, he under-

[1] For abstracts of arguments see *ante*, p. 234.

took to make a cash entry of the land under the act of 1887, as did his neighbor Wiese. All the questions involved in the *Wiese case* are present in this, and, for the reasons given in the opinion in the former, the judgment of the Supreme Court of Nebraska in this case must be

Affirmed.